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Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

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VOLUME IV

THE AWARD OF DESIGN CONTRACTS : AN OVERVIEW

DESMOND AND LORD, INC.

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I. INTRODUCTION

This section summarizes evidence presented to the Special Commission, or obtained by the Special Commission through its investigations, with respect to how the Commonwealth awarded state and county contracts from 1962 through 1974. This period covers the administrations of Governors Peabody, Volpe and Sargent.

Although the laws governing state design contract awards changed during this time, and the people administering these laws changed, what did not change was a pattern of allowing political and other considerations separate from merit to determine who was selected to receive state design contracts. During the Peabody years the power to award design contracts lay solely with the Commissioner of the Executive Office for Administration and Finance (A&F). The Commissioner, in this case, William Waldron, consulted regularly with Sherwood Tarlow, Peabody's chief fundraiser. Tarlow estimated that as a result of these consultations 75 to 80 percent of the design contract awards made during the Peabody administration went to supporters of the Governor.*

After John Volpe became Governor in 1964, there were revelations about the circumstances surrounding the award of the design contract for the University of Massachusetts Medical School, as well as the presentation of evidence to a legislative committee indicating that John Volpe's brother, contractor Peter Volpe, was regularly consulted on design contracts awards.** As a result, the Massachusetts General Court enacted legislation in 1966 creating the Designer Selection Board (1966 Acts and Resolves, Chapter 676.)*** Because the DSB screened applicants for design contracts and narrowed finalists to three or four firms, it was believed that only qualified firms would be awarded contracts. But the Designer Selection Board system could be, and was, successfully manipulated by design firms knowledgeable about state bureaucracy.

*The practices, events and contract awards of the Peabody administration are described in the section entitled Peabody Era, infra.

**See Volpe Era: Before the Establishment of the Designer Selection Board, infra.

***See Volpe Era: After the Establishment of the Designer Selection Board, infra.

The DSB membership consists of six constant voting positions, including the Director of the Bureau of Building Construction (BBC) ex officio, and a seventh rotating vote given to a representative from the user agency (such as the Department of Mental Health or the Department of Corrections) of the project being considered for award.*

This representative typically was the chief engineer of the user agency. Since the full quorum of seven members frequently was not present, and the other possible first place votes often were spread over more than one firm, it was possible for an architect to virtually assure his choice as a finalist if he could successfully lobby for the first place votes and attendance at the meeting, of the BBC director and user agency representative.

William Masiello, in his public testimony before the Commission on May 13, 1980, described how he successfully manipulated the DSB screening process:

- Q. Now, Mr. Masiello, I wonder if at this point you might just take a moment, without going into any detail of what you have done, because you certainly described that, relate your strategy of getting jobs and relate that, if you will, to your opening statement where you described access in other matters, where you were able to plan it out so you knew you could in essence subvert the system as at least is described in the rule books.
- A. Mr. Littlefield, I believe the strategy -- I think I carefully went over ---
- Q. Well, you did go over the details. But, I think at one point you told me that you also knew before the formal meetings were held whether or not you were going to get a job and if you didn't have it by the time the meetings were held you knew if you would.
- A. In those terms, yes. Whenever I set forth to get a project I would do all the leg work, in this particular case I pointed out how I went to Vic Zuchero first, how I went to Jim Kerr second, how I went to Walter Poitras and when I found out he wasn't going to be there, which he ultimately was there because I think he cancelled a vacation for a meeting, and then I went to George Rushton thinking he was going to be the vote from the BBC. So, it was a well laid out plan. As a matter of fact, I kind of patted myself on the back, taking that kind of approach to win the project. As a matter of fact, I believe it was Mr. Edward M. Healy who was a former associate with Masiello Associates, and he used the exact same method of getting to Jim Kerr because I told him who to go see. I said make sure you go see him, and he took the same approach, went to see Mr. Kerr. He got Mr. Kerr the vote for him, and then when his name did appear on the DSB recommended list of three I talked to Mr. Manzi, I told him that I believe I could get him -- it was a \$10,000 study, I believe. I asked Mr. Healy for 10 percent of the contract, which in this incident I believe the contract was \$10,000, he was supposed to give me a thousand dollars. I had everything set. Manzi took care of it. Mr. Healy did get the contract...

Mr. Mahoney: Implementation of this strategy, this is testimony that we have had about it before, when you went to the using agency representative and to the BBC representative, and as you say, lined up their vote, it was important that that vote be Masiello number one, is that not correct?

*The statute further provides for an Executive Secretary who lacks a vote.

The Witness: Well, if you knew how the Designer Selection Board voted and you knew how they selected an architect, it was very important to get a number one vote.

Mr. Mahoney: Right.

The Witness: Because number one, they use one, ten, two, nine, three, eight.

Mr. Mahoney: The ranking of number one was vital to your strategy?

The Witness: Well, it's vital but it doesn't always work out. I will give you another incident where I took the same approach on the Fitchburg Courthouse in Worcester County, and I received three number one votes, and I received four number ten votes. I ended up with 34 points. So, sometimes it doesn't work, only because it's my understanding through one of the members of the Designer Selection Board after they had met he came up to me and he said Mr. Littleton got up and said that he was going to be -- he was going to testify against the Masiello firm for severely injuring a person at the Worcester County Jail. Three people, I believe it was Mr. Sullivan, Mr. O'Toole who represented the County Commissioners of Worcester, and I believe Mr. Rushton. Each gave me their number one vote. But, the other four members gave me number ten. So, I believe the system does work. Maybe ---

Mr. Mahoney: I understand it doesn't always work, but the strategy is to obtain as many first place votes, that is number one votes, not just a vote you want from the using agency, Masiello & Associates number one, is that not correct?

The Witness: Absolutely.

Mr. Mahoney: And you wanted from BBC Masiello & Associates, number one:

The Witness: That is correct, yes.

Mr. Mahoney: And anybody else you can get?

The Witness: Anybody that would listen.

Mr. Mahoney: And the results of that, where you've got a maximum number of people on the Designer Selection Board of seven, let me finish, with a vote of influence... if you end up with three first place votes you're in pretty good shape.

The Witness: Absolutely.

Mr. Mahoney: Thank you.

The Witness: Mr. Mahoney, I might add, the using agency in this particular case that I stated, Mr. Kerr, he is a very, very powerful voice on this Designer Selection Board.

Mr. Mahoney: Who's this?

A. Mr. Kerr, at Mental Health. So, if you can win the using agency's vote, Mr. Kerr's and he got up and he strongly said that I would like to see Masiello on this project, it would be very difficult for the other member not to comply because there's going to come a day when they get up and they say we would like Mr. Mahoney to get this project. I'm taking your name hypothetically.

Mr. Mahoney: I know you are.

The Witness: And you could see what would happen, so your time for a vote for another member goes by the Board.

Mr. Mahoney: You're telling us the using agency voted a substantially greater vote than any other vote?

The Witness: Absolutely.¹*

There is substantial evidence that various individuals either actively involved in fundraising or closely familiar with fundraising activities interceded on behalf of certain firms once the firm made the DSB list of finalists. When Anthony DeFalco first became Commissioner of A&F in 1967, the DSB ranked the three finalists in order of preference. Despite this ranking DeFalco frequently awarded design contracts to firms which were not at the top of the DSB's list, including the Gentile School contract awarded to the Masiello & Healy firm.** Frank Masiello has testified to receiving that contract award after making a commitment to Albert "Toots" Manzi, a Volpe fundraiser, for specific political contributions.***

The DSB ranking of design firms was discontinued at DeFalco's request after the appearance of a newspaper article commenting on the pattern of design contract awards to other than the top ranked firms. Subsequently, DeFalco awarded the Holyoke Community College contract to the California design firm of Daniel, Mann, Johnson & Mendenhall ("DMJM"). There is substantial evidence before the Special Commission, summarized in other sections of this report,^{*1} which indicates that this award was made as a result of commitments to Manzi to make substantial cash contributions.

DeFalco denied that Manzi or any other person communicated with him with respect to design contract awards.^{*2} The A&F Commissioners who served under Governor Sargent also were consistent in denying any improper political

*Victor Zuchero was fundraiser for the Sargent administration; James Kerr the voting representative from the Department of Mental Health; Walter Poitras the Director of the BBC; George Rushton the Deputy Director of the BBC; Earle Littleton the Chairman of the DSB; and James Sullivan architect and Vice Chairman of the DSB. Masiello in mentioning "this particular case" refers to his efforts to obtain the contract to design Springfield Mental Health Center.

**See section of this report entitled Volpe Era: After the Establishment of the Designer Selection Board, infra.

***See section of this report entitled Volpe Era: After the Establishment of the Designer Selection Board, infra. and another section entitled Gentile/Danvers/Concord, infra.

^{*1}See section entitled Volpe Era: After the Establishment of Designer Selection Board, infra.

^{*2}See section of this report entitled Volpe Era: After the Establishment of the Designer Selection Board, infra.

influence in their design contract awards.* Yet, as is true with DeFalco, there is substantial evidence before the Commission from several sources of regular political input into the designer selection process. Albert Zabriskie, Executive Secretary of the DSB and Deputy Commissioner for Central Services, testified that he consulted regularly with Donald Dwight while Dwight was Lieutenant Governor to obtain Dwight's input on design contract awards, and that he communicated Dwight's preferences to each of the A&F Commissioners under whom he served. ** Donald Dwight agreed that he made recommendations concerning contract awards throughout the terms of the four A&F Commissioners who followed his own term, but disagreed with Zabriskie's testimony concerning the frequency and mechanics of his input.***

Harold Greene, Governor Sargent's State Service, or Patronage Secretary, and Victor Zuchero, Executive Secretary of the Sargent Committee, both admitted to "putting in a good word" for certain architects who were supporters of the Governor.*¹ And fundraiser Albert Manzi's name still appears frequently as a person successfully recommending architects for contract awards, particularly on a document (a working copy of the July 26, 1972 DSB minutes) reflecting recommendations by Manzi, Zuchero and Dwight for specific design contract awards.*²

Many architects testified before the Special Commission about contacts with, and payments to, Dwight, Manzi or Zuchero, and of subsequent receipt of design contract awards.*³ What is clear from all this evidence is that factors other than merit determined which firms received many of the design contracts awarded during the Sargent administration.

*See Sargent Era, The Commissioners, infra. Donald Dwight's activities as Commissioner of A&F in awarding design contracts are primarily discussed in the MBM report, supra.

**See section of the report entitled Sargent Era: Donald Dwight/Albert Zabriskie, infra.

***See section of this report entitled Sargent Era: Donald Dwight/Albert Zabriskie, infra.

*¹See section of this report entitled Sargent Era; Harold Greene and Sargent Era; Victor Zuchero, infra.

*²See sections of this report entitled Sargent Era; Harold Greene and Sargent Era; Architects, infra.

*³See section of this report entitled, Sargent Era; Architects, infra.

II. PEABODY ERA (JANUARY 1963 - DECEMBER 1964)

A. Introduction

William A. Waldron was Commissioner of Administration and Finance (A&F) from January 1, 1963 through the end of 1964, the years when Endicott Peabody was the Governor of the Commonwealth of Massachusetts. In January, 1963, a statutory change became effective which gave the Commissioner of A&F the ultimate responsibility, after consulting with the Director of the Bureau of Building Construction (BBC), for selecting design firms for the award of contracts (1962 Acts & Resolves, chapter 757). Previously this power lay with a commission composed of several executive officials.¹

Although Waldron, as Commissioner, did in fact make these selections, he ordinarily did so after first consulting with Sherwood Tarlow, Peabody's campaign treasurer and fundraiser, who also held the position of Coordinator of Intergovernmental Relations within A & F.* Waldron made no decision without first consulting either Tarlow or the Governor.** Of the two, Peabody was consulted only on a few occasions. Tarlow's recommendations to Waldron were based upon the contribution histories of certain designers and engineers.*** His recommendations were accepted as a regular practice so long as the BBC, through its Director, Horace Chase, verified the competence of the recommended design firms.**** Tarlow testified that 75% to 80% of the design contracts awarded by the Peabody administration went to political contributors whom he recommended.*****

Waldron, in public testimony before the Commission on April 9, 1980, characterized this system as "simple favoritism":

If I can still use the term which was in one of your presentations to the legislature which I thought fit our situation precisely, you said simple favoritism, and I think that is what we tried to do. That is, assuming the person was qualified, fitted the project as best we could from advice from the BBC, and our own instincts, so to speak, then we favored the person who had been one of the Governor's supporters and that was my attitude as Commissioner, and as I said, I make no apologies for it.²

*Tarlow's dual role in the Peabody administration is detailed below in the next section headed Background: Fundraising and Design Contract Awards.

**The design contract award process is detailed below in the section headed Simple Favoritism: How Design Contracts Were Awarded.

***Ibid.

****Ibid.

*****Ibid.

Tarlow, in his public testimony before the Commission on April 8, 1980, agreed that the system during the Peabody years was one in which architects, through campaign contributions, purchased insurance in the form of influence in the designer selection process.³ Tarlow identified the Executive Office of Administration & Finance and the Bureau of Building Construction within A&F as among the biggest areas of patronage controlled by the Governor.⁴ Governor Peabody, during his public testimony before the Commission on June 19, 1980, admitted that design contracts were an area of patronage during his administration, and that this was a fact well known in the community of architects and engineers:

First of all, architectural contracts were an area of patronage in our administration. They were in the previous administration, they were in subsequent administrations. In saying that I don't wish to condemn them. Patronage to me is not a bad word. Patronage is what you give to people who support your campaign, who believe in your candidacy and who put you in office. You give patronage to whom I consider are good public citizens, who go out and work publicly to improve the government.... It was well known to architects, and I may have told them myself in Woody Tarlow's presence, that if they helped us in a campaign, that we would consider them for an architectural award when the opportunity came up, provided they were competent and their competency filled the bill.⁵

An understanding of the designer selection process during the Peabody years requires knowledge of the campaign fundraising activities directed at architects and engineers. The importance to engineers and architects of design contract awards was a factor aggressively pursued in Tarlow's fundraising activities. Tarlow's representation to architects and engineers that he would see what he could do to assist them was a persuasive technique used to solicit contributions.* Tarlow implemented this representation at meetings which he had with A&F Commissioner Waldron, and to which he brought a list of architects and engineers to whom, because of their political and financial support of Governor Peabody, he wanted to award design contracts.** Frank Masiello, an architect who benefited from this system of interrelating contract awards and campaign contributions, provided in his testimony a graphic example of what one architect did to seek state contracts under the Peabody administration.*** The details of how campaign fundraising and design contract awards meshed, presented in testimony at Special Commission hearings, is described below.

*Tarlow's representations to contributors are detailed below in the section headed The Boiler Room: Squeezing Money Out of a Stone.

**Tarlow's input into the designer selection process is detailed below in the section headed Simple Favoritism: How Design Contracts Were Awarded.

***A description of Masiello's actions follows in the next three sections.

B. Background: Fundraising and Design Contract Awards

Tarlow, a man who was so successful in raising money that he was said to "squeeze money out of a stone,"⁶ was Peabody's treasurer and fundraiser for the 1962 and 1964 campaigns.⁷ Tarlow engaged in active personal solicitation to raise large amounts of money from potential contributors.

Tarlow testified before the Commission that he rented a suite at the Statler Hilton Hotel from which he conducted fundraising activities.⁸ His methods included telephone solicitations, mailings, parties and dinners.⁹ Between the Democratic Convention at which Peabody was nominated and the 1962 general election in which he was victorious by a narrow margin, Tarlow raised over \$750,000 for the Peabody campaign.¹⁰ Following the 1962 election, Tarlow organized a dinner in February 1963 to retire the deficit incurred during the campaign.¹¹ About \$250,000 was raised from this event, which eliminated the deficit and brought the total amount raised to over one million dollars.¹²

Tarlow continued to play an important role after Peabody's election. In addition to appointing Tarlow as Coordinator of Intergovernmental Relations within A&F, Peabody designated Tarlow a member of his Patronage Committee.¹³ Tarlow, during his testimony before the Commission, described his new responsibilities as coordinating people helpful to Peabody during the campaign, including architects and architectural engineers, and meeting with A&F Commissioner William Waldron to make recommendations concerning the award of design contracts.¹⁴ Tarlow and Waldron both testified that Tarlow was assigned by the Governor to be his "right hand man" or "representative" in the award of contracts.¹⁵ According to Tarlow, Peabody told him to work with Waldron to choose qualified architects and instructed him that, "everything being equal, we want to make sure that we consider those who helped us."¹⁶

Among the contributors to the February 1963 deficit dinner was Frank Masiello. Masiello's description of how he came to be a contributor epitomizes the relationship between campaign contributions and contract awards. Masiello testified, in a public hearing before the Commission on March 27, 1980, that after Peabody took office, he made inquiries to various Peabody supporters because of his concern that the two design contracts his firm, Masiello & Associates, had with the Commonwealth would be cancelled.^{17*} Tarlow, whom Frank Masiello knew to be Peabody's chief fundraiser, subsequently contacted Masiello and invited him to come in to discuss his contracts.¹⁸ At this meeting, Tarlow suggested that he might be able to

*These two contracts were at MCI-Concord and Danvers State Hospital.

straighten out matters.¹⁹ Masiello testified that Tarlow then said Governor Peabody needed help in paying his campaign deficit, and suggested that Masiello and some of his acquaintances buy tickets, at \$1,000 per couple, to the deficit dinner.²⁰ According to Masiello, Tarlow indicated that Masiello's willingness to contribute to the campaign deficit and participate in fundraising activities would assure that Masiello kept his contracts,²¹ although Masiello also received the impression from Tarlow that regardless of what he did, existing contracts would not be cancelled because they had been properly executed.²² Frank Masiello of Masiello & Associates and Anthony Mansueto of MBM did eventually both buy tickets to the February 1963 deficit dinner at the Statler Hilton Hotel.²³

C. The Boiler Room: Squeezing Money Out of a Stone

Fundraising activities by Tarlow and Masiello's involvement in them continued after the elimination of the 1962 deficit. Masiello's involvement again provides a vivid example of Tarlow's effectiveness in using an architect's desire for contract awards to raise money and recruit voluntary help. Frank Masiello, during a public hearing before the Commission, testified that shortly after the 1962 deficit dinner Tarlow asked him if he was interested in helping raise funds for the Governor's future campaign activities.²⁴ Tarlow told him that the fundraising activities would involve inviting people to meet the Governor in a suite at the Statler Hilton, at which time they would be asked to contribute to the Governor's campaign.²⁵ Tarlow confirmed in his public testimony before the Commission, that Masiello was among individuals from campaign field organizations who were asked to bring people to the hotel suite to make contributions.²⁶ Tarlow described these meetings at the Statler Hilton as an opportunity for people to meet the Governor and receive personal recognition for their contributions to the campaign.²⁷

During his public testimony before the Commission, Frank Masiello described the way in which Governor Peabody and his staff conducted fundraising specifically directed at architects and engineers.²⁸ After learning from Tarlow the date and time the Governor would be in the suite to meet people, Masiello would contact the architects and engineers whom he knew (mainly those used as consultants by his firm²⁹). He invited them to meet the Governor, telling them the location, date and time. During this initial contact he also explored the possibility of their making a campaign contribution. Tarlow testified that people usually were told in advance the purpose of their meeting with the Governor:

Q. There was no doubt when you made an appointment for somebody to come in and meet the Governor at the Statler, when Mr. Masiello made an appointment for somebody to come and meet the Governor or Mr. Harkins made an appointment for his people to meet the Governor, they knew this was in connection with a request to make a contribution?

A. Most of the time that is correct, sir, yes.^{30*}

After talking to the potential contributor, Frank Masiello would then inform Tarlow who was coming.³¹ Following this, he would contact the architects and engineers to confirm the visit.

Tarlow testified that when fundraising demands were particularly great, such as around the time of the deficit dinner, Peabody would be in the Statler Hilton suite as many as four days a week, for one to two hours in the afternoon.³²

Tarlow and Masiello, in their public testimony before the Commission, described the hotel suite. It consisted of three rooms: a parlor-reception room, where visitors first entered, and where Assistant Treasurer Harkins and his staff also conducted telephone solicitation of potential contributors; a middle room where the Governor met visitors; and a third room in which contributions were given and from which the visitors departed.³³ Assistant Treasurer Frank Harkins usually met visitors in the parlor-reception room when they arrived.³⁴ Someone in this first room would record the name, address and occupation of each visitor.³⁵

Tarlow testified at a public hearing that he or Masiello often met potential contributors in the first room.³⁶ Tarlow tried to size up a visitor in terms of how much money he might give. He often "warmed up" a visitor, encouraging him to make a substantial contribution or increase his contribution.³⁷ If he were making the introductions, Frank Masiello gave Tarlow information helpful in evaluating a visitor's potential for contributing, including his profession and willingness to make a contribution.³⁸ Tarlow then asked each visitor what firm he represented, whether he was the firm's owner, and about his past and present involvement with state work.³⁹

Tarlow testified that in response to his questions, the individual usually described the type of work he was doing, indicated that he would like to be considered for some continuing or new work and expressed the hope that the administration would remember him.⁴⁰ As recounted by Tarlow, his encouraging but equivocal response to this plea was:

I am sure that you understand that I am only the Treasurer, that I am the fundraiser. If I have anything to say about it, and you do your part, when we need it at this particular time, I am certain everything else being equal, I would recommend that you be considered.⁴¹

*Frank Harkins was Peabody's Assistant Treasurer.

Before taking a prospective contributor in to see the Governor, Tarlow quickly told Peabody who was coming in, whether the individual had been doing state work, what had been said concerning the person's willingness to contribute, and what Tarlow had said to the potential contributor about giving him some consideration in the award of contracts.⁴² Tarlow often indicated to the Governor what he thought the amount of the contribution might be.⁴³ If Tarlow were already in the second room with Peabody, Harkins or Masiello brought the person in.⁴⁴ Otherwise, Tarlow took the person into the Governor's room. He or Masiello told the Governor, in the presence of the prospective contributor, the information concerning the person's background and receipt of state contracts.^{45*46} The Governor then thanked the visitor, telling him that he would, at an appropriate time, receive favorable consideration in contract awards if at all possible.⁴⁷

Masiello testified that he and Tarlow usually next led the architect or engineer into the third room where he was asked if he was interested in supporting the Governor's campaign financially.⁴⁸ In every instance that Masiello can recall, the answer was affirmative.⁴⁹ Tarlow then asked the person how much he wanted to give.⁵⁰ After an amount was stated, Tarlow asked the potential contributor if he was prepared to make the contribution on that day.⁵¹ The potential contributor usually answered that he was not ready to give the contribution immediately, but would like to return with it at a later date.⁵² Masiello explained this procedure of making contributions over a period of time rather than giving one lump sum as a ploy by architects to meet the Governor several times so that he would recognize them promptly.⁵³ Tarlow, during his testimony, used the term "knuckling somebody for a contribution" to describe the one-on-one solicitation process which occurred in the third room.⁵⁴

Tarlow testified at a public hearing before the Commission that Rubin Epstein, the President of City Bank & Trust Company, was also present in the third room to arrange loans for contributions.⁵⁵ These loans were signed on the spot, discounted immediately, and the discount amount paid directly to the campaign. If the contributor was not known to Epstein, a credit check would be conducted after the fact to determine whether the executed note should be cancelled. Tarlow could only recall one or two instances in which such loans were cancelled.⁵⁶

It was also in this third room that architects again discussed being considered for continuation of present contracts or for new awards.⁵⁷ Tarlow

*Masiello testified that Tarlow also told the Governor in the presence of the prospective contributor that the person would like to support the Governor's campaign. ⁴⁶

publicly testified that he generally indicated to the contributor that the Governor was appreciative of his financial support and would give him favorable consideration when the capital outlay budget came out, but that he was careful not to say that the political contribution guaranteed a contract award. He would tell the contributor that his firm appeared to be qualified and competent, and that he would remind the Governor and his administration that the firm should be considered for a contract opportunity "somewhere down the line."⁵⁸

Q. Would you say that it was implicit and they recognized, the architect, potential contributor, recognized that if they made contributions they would get favorable consideration in connection with the contract they were looking for?

A. Yes. I would say it was implicit in that respect. It was not implicit that quote if I make a contribution, can I get a contract or you will award me a contract or if I give you a percentage of such a contract or such award, I will make a contribution. That was not implicit. I would like to distinguish those.⁵⁹

Peabody when publicly testifying concerning representations made by Tarlow or himself was adamant that no promises were made about particular contracts based on the fact and amount of a person's contribution.⁶⁰ He testified that the restriction of competency existed and that there was no quid pro quo.⁶¹

Frank Masiello testified that he was personally present at ten or more sessions at the hotel suite over the period of one and a half years.^{62*} Meetings were more frequent than this, but he attended only some, those which involved architects and designers.⁶⁴ Masiello stated that he felt it was necessary to participate in such fundraising activities in order to insure that he would receive state contracts.⁶⁵ Masiello estimated that during the Peabody administration he also contributed \$4-5,000.⁶⁶ Tarlow, however, testified that he considered this estimate to be "optimistic."⁶⁷ Tarlow's memory is that Richard Thissen**⁶⁸ was Peabody's leading financial supporter, contributing between \$2,000 and \$4,000.⁶⁹

Q. You told me when we met last week no doubt Mr. Thissen would be number one on your list, you knew you could always get a grand from Dick Thissen. He was that type of guy.

A. Yes, I think that pretty much represented our thinking, and my thinking at the time.⁷⁰

D. Simple Favoritism: How Design Contracts Were Awarded

The governmental process which culminates in the award of design contracts begins with the capital outlay budget.⁷¹ This budget contains the appropriations for specific projects for which design and construction contracts

*Tarlow in his testimony confirmed that Masiello attended ten or more of these sessions.⁶³

**Masiello testified that Thissen was among the architects he saw at fundraising activities.⁶⁸

will be awarded. According to Waldron, the Bureau of Budget, together with the BBC, performed the basic work on the budget.⁷² Waldron and the Governor also worked on it.⁷³ The capital outlay budget included both continuations of previously awarded contracts and new contracts.⁷⁴

Waldron testified at a public hearing that once the capital outlay budget was signed by the Governor, the BBC then prepared schedules identifying each project, its location, the agency involved, and the amount of the appropriation.⁷⁵ The BBC would indicate its recommendations regarding continuing and new projects on the schedules it prepared.⁷⁶ In the case of continuing projects, the BBC usually recommended the extension of the designer's services for subsequent contracts. In the case of new projects, the BBC would submit the names of four or five designers it thought were qualified for the project. Waldron, after receiving the schedule, would review the recommendations with the Director of the BBC so that he knew the BBC's opinion.⁷⁷ Waldron characterized the BBC recommendation procedure as an informal one.⁷⁸ He stated that the new statute did not require that the Director of the BBC make a recommendation, but only that the Commissioner of A&F consult with him.⁷⁹

After the enactment of the capital outlay budget and the receipt of schedules and recommendations from the BBC, Waldron met with Tarlow.⁸⁰ Although ultimate responsibility for contract awards lay, by law, with Waldron, he testified to his understanding that the Governor had designated Tarlow as his representative or spokesman concerning contract awards.⁸¹ Waldron would not make a final decision without consulting either Tarlow, as he did in the majority of cases, or, occasionally, the Governor.⁸²

At some point Waldron gave Tarlow a copy of the capital outlay budget.⁸³ Tarlow publicly testified that prior to meeting with Waldron, he was contacted by architects and engineers about the projects included in the capital outlay appropriation.⁸⁴ These people requested that Tarlow recommend them for continuing or new contracts. He had met some of these architects and engineers at the Statler Hilton fundraising affairs and many of them had made contributions. Tarlow testified that he formed his opinion about whom to recommend on the basis of their past contributions.⁸⁵ Other than contributions, he based his recommendations on the self-assessment by architects⁸⁶ of their qualifications rather than on external assessments.

In other words, if an architect told Tarlow that he did good work or that he was a leading designer in a certain area, Tarlow accepted that statement at face value. Tarlow admitted during his public testimony before the Commission that he had no experience in assessing the competence of architects, and that he did not investigate an architect's previous buildings.⁸⁷

Waldron testified that 80% of the projects on the capital outlay budget were continuing projects, the other 20% being new contracts.⁸⁸ His policy was to continue the previously awarded contracts if the firms were qualified.⁸⁹ Waldron stated that the firms did not, however, have to be the best qualified.⁹⁰

Tarlow testified at a public hearing that when he met with Waldron, they reviewed a schedule of individual building projects with budgets based on the capital outlay.⁹¹ Tarlow stated that he assumed the BBC's recommendations on the schedule resulted from their research on the firms and their conclusion that the firms were competent to do the job.⁹²

Waldron publicly testified that Tarlow brought to their negotiations a list of designers for whom he hoped A&F would find appointments.⁹³ According to Waldron's public testimony, Tarlow was interested mainly in the award of new contracts.⁹⁴ In most cases Tarlow had already made a design assignment.⁹⁵ Tarlow and Waldron both publicly testified that if Tarlow's recommended candidate was one of those on the schedule Waldron had received from the BBC, this firm was normally chosen.⁹⁶

When Tarlow's recommended candidate was not on the BBC list, Tarlow publicly testified that he and Waldron would argue back and forth in a friendly fashion.⁹⁷ If Tarlow was successful in persuading Waldron, Waldron would investigate whether the firm was qualified.⁹⁸ If Waldron decided it was, the contract would usually be awarded to Tarlow's candidate.⁹⁹ Waldron similarly testified that he would offer to investigate firms not on the original BBC schedule.¹⁰⁰ This investigation consisted of calling the BBC Director to ask his opinion.¹⁰¹ The Director would either indicate then that he knew that the firm was qualified or he would call back later, after checking out the firm, to say that the firm was qualified.¹⁰²

Q. So, the bottom line, I guess, in both cases where Mr. Tarlow's candidate is on the list that you had from the BBC and where Mr. Tarlow's candidate is not on a list that you had from the BBC is that if you are able to determine with Mr. Chase that the firm is qualified, even though it may not be the most qualified, and if that firm fits for that job, that Mr. Tarlow's candidate gets the job?

A. That's correct, and I was never troubled by that for the reasons I have stated.¹⁰³

Waldron conceded that, because of human nature, the Director of the BBC would try to accommodate the request of his superior, the Commissioner of A&F. But he also stated that, in his judgment the Director of the BBC at that time, Horace Chase, was sufficiently strong-minded to express any objections.¹⁰⁴ However, Tarlow's estimate that 75% - 80% of the design contract awards were political,¹⁰⁵ i.e., based upon Tarlow's recommendations, confirms that independent judgment regularly deferred to political considerations.

Following Waldron's consultation with the Director, the BBC, in a formal procedure, would send a letter to Waldron's office describing the project and recommending a firm for the assignment.¹⁰⁶ This was the only formal letter received from the BBC in the award of contracts, the previous schedule being informal.¹⁰⁷ The letter created the appearance that the BBC, rather than Tarlow, was the source of the recommendation.¹⁰⁸

The crucial questions are: how did Tarlow and Waldron determine whether a firm was qualified enough to receive a particular contract and what constituted the criteria of competence? Waldron, during his public testimony, repeatedly mentioned the standard of general or adequate competence.¹⁰⁹ Choosing the best or most qualified firm was not considered necessary. No independent architectural investigation was made by either of the two decision-makers. Requiring only adequate qualifications facilitated their use of political considerations.

The architects and engineers who wanted previous state contracts continued or new contracts awarded from the capital outlay appropriations were not bashful about making their interests in specific contract awards known to Tarlow and, through Tarlow, to Waldron.¹¹⁰ One such architect was Frank Masiello, who publicly testified about what he did to get certain design contracts from the 1964 capital outlay appropriations awarded to him.

According to Masiello's testimony, Tarlow told him at the time of the 1964 Democratic state convention which nominated Peabody, that he would review the capital outlay program with Masiello after it was enacted. Tarlow assured Masiello that he would probably give him a project for which his firm was qualified. Up until this time, Frank Masiello had never asked Tarlow what Masiello & Associates could expect in the way of new and continuing contracts.¹¹¹

By the time of Peabody's defeat in the primary, the capital outlay budget had been passed. Masiello testified that upon returning from a vacation, he called the BBC to ask if his firm had been assigned any projects. When given a negative answer, he visited Tarlow at his home. Masiello told Tarlow that he was disturbed that his firm was not being considered for any work, reminding Tarlow of his prior assurance. Tarlow indicated that Masiello & Associates had been continued on their MCI-Concord and Danvers State Hospital projects.* Masiello replied that he didn't know why he had to continue to pay dues on projects he had received in a previous administration. He reminded Tarlow of his active participation in fundraising activities.¹¹²

*How the Masiello's obtained MCI-Concord and Danvers State Hospital is detailed in a later section of this report entitled Gentile/Danvers/Concord.

Masiello testified that Tarlow then pulled out a document which listed the state projects funded by the 1964 capital outlay, with the names of design firms next to specific contracts.*¹¹³ Tarlow examined this list, and changed two assignments to give Masiello & Associates the Fernald State School and Westborough State Hospital projects. He effected the change by crossing out the name of the previously assigned firms and inserting the name of Masiello & Associates. Tarlow promised Masiello that he would send Masiello's name to the BBC for its authorization of the awards.¹¹⁴ Masiello's testimony is consistent with the system described by Waldron and Tarlow above.

Tarlow made further reassignments in response to Masiello's arguments on behalf of other design firm contributors, including consultants used by the Masiello firm. Masiello testified that Tarlow again went through the list, crossed out the names of firms previously assigned to the projects, and inserted the names of firms whose principals Masiello had brought to fundraising events for Peabody.¹¹⁵ Two of the consultants and contributors on whose behalf Frank Masiello spoke were E.J. Flynn and R.G. Vanderweil.¹¹⁶

Tarlow, in testimony before the Commission, agreed with the substance of Masiello's account of this meeting, qualifying his agreement with the statement that the two additional contracts were only recommendations by him because it was not within his power to award the contracts.¹¹⁷ Nevertheless, the record reflects that both of these Tarlow "recommendations" resulted in contract awards to the Masiello firm.

On October 30, 1964, A&F Commissioner Waldron awarded the contract for the design and construction of a new male geriatric building at Westboro State Hospital to Masiello & Associates. On November 13, 1964, A&F Commissioner Waldron awarded the contract for the design and construction of a new infirmary for Fernald State School to Masiello & Associates.¹¹⁸ (See A&F Appendix Exhibit #1.) On October 20, 1964, October 28, 1964, and November 4, 1964, A&F Commissioner Waldron awarded contracts for MCI - Bridgewater, Grafton State Hospital, MCI - Norfolk and Fernald State School to E.J. Flynn & Associates.¹¹⁹ (See A&F Appendix Exhibit #2; there was also an earlier Boston State Hospital award.) On October 28, 1964 A&F awarded a contract for MCI - Norfolk to R.G. Vanderweil.¹²⁰ (See A&F Appendix Exhibit #3.)

Masiello identified other architects and engineers whom he knew to be contributors from his own observations at the Statler Hilton suite. These contributors and their firms included Richard Thissen (Desmond & Lord), David Nassif (Universal Engineering), John Guarino (John Guarino), John Pierce (Pierce

*This appears to be the type of list Tarlow testified that he brought to his meetings with Waldron.

& Pierce), Edward Tedesco (Edward Tedesco & Associates), Samuel Glaser (Samuel Glaser & Partners), Nicholas Lento (Whitney, Norcross, Atwood Associates), John Hellman (Hellman & Kempton), Nathan Weiner (Haldeman & Jacoby) and Gary (Moriece & Gary).¹²¹ Tarlow, in his public testimony before the Commission, confirmed that Thissen, Weiner and Tedesco were among the contributors present at the suite.¹²² The Special Commission's review of design contract awards under the Peabody administration confirms that these designers were remembered when contracts were awarded.

In 1963 and 1964 Desmond & Lord received contracts for Worcester State Hospital, Framingham State College, Southeastern Massachusetts Technological Institute (now Southeastern Massachusetts University, or SMU), Northampton State Hospital, Boston Mental Health Community Center, Cape Cod Community College and Institute of Labs.¹²³ (See A&F Appendix Exhibit #4.)

In 1963 and/or 1964 Universal Engineering received contracts for Metropolitan State Hospital, Wrentham State School, Fernald State School, Medfield State Hospital and Gardner State Hospital.¹²⁴ (See A&F Appendix Exhibit #5.)

In 1963 and/or 1964 John Guarino received contracts for Bridgewater State College, Lowell Technological Institute, Medfield State Hospital and Fernald State School.¹²⁵ (See A&F Appendix Exhibit #6.)

In 1963 and 1964 Pierce & Pierce received contracts for UMass, Boston State Hospital and Fernald State School.¹²⁶ (See A&F Appendix Exhibit #7.)

In 1963 and 1964 Edward Tedesco & Associates received contracts for Oakdale Residential Treatment Center and Northern Essex Community College.¹²⁷ (See A&F Appendix Exhibit #8.)

In 1963 and 1964 Samuel Glaser & Partners received contracts for Lowell Technological Institute and Fitchburg State College.¹²⁸ (See A&F Appendix Exhibit #9.)

In 1963 and 1964 Whitney, Atwood, Norcross Associates received contracts for Boston State College, Salem State College and for a Boys' Reception and Detention Facility in Boston.¹²⁹ (See A&F Appendix Exhibit #10.)

In 1964 Hellman & Kempton received a contract for Massachusetts Maritime Academy.¹³⁰ (See A&F Appendix Exhibit #11.)

In 1964 Haldeman & Jacoby received contracts for North Adams State College and Southeastern Massachusetts Technological Institute.¹³¹ (See A&F Appendix Exhibit #12.)

In 1964 Moriece & Gary received a contract for Cape Cod Community College.¹³² (See A&F Appendix Exhibit #13.)

Richard Thissen of Desmond & Lord was both Peabody's largest contributor among design firms* and received the largest dollar value of projects awarded to any design firm during the Peabody administration. Special Commission staff prepared a summary of projects included in the 1963 and 1964 capital outlays.** This summary shows that from a total appropriation of \$107,672,000, Desmond & Lord received design contracts for projects for which \$20,301,000 was appropriated during the Peabody years. This represents 18.9% of the total capital outlay appropriation for this period.¹³³ Preferential treatment of the Desmond & Lord firm is not only empirically demonstrable but is also consistent with Tarlow's recollection of the Peabody administration's dealings and actions with respect to Desmond & Lord:

Q. And how would you describe the contribution of Mr. Thissen in terms of -- in relation to other architects and the success of Mr. Thissen in receiving projects generally speaking?

A. I would say he was one of our leading contributors and he probably would have given us a few thousand dollars.

Q. Now, you had told me when I interviewed you last week that no other architect was as big a contributor as Mr. Thissen.

A. I believe that to be true.

Q. Do you have any doubt Mr. Thissen received more contracts from your administration, more design contracts, than any other firm?

A. No, that's true. I have no doubts about that.

Q. Well, I think what you told me last week was we took care of him very well in a very big way. Do you have any doubt about that being the case?

A. No. Certainly we took care of Desmond & Lord.... That is correct.

Q. What was your attitude towards his firm when it came time to put, give your input with Mr. Waldron on awarding design contracts?

A. Positive, of course.¹³⁴

E. Design Legacy of Simple Favoritism

A&F Commissioner Waldron expressed the opinion during his public testimony before the Commission that a great many of the projects in the 1963 and 1964 capital outlays were not particularly challenging to a designer.¹³⁵ Waldron

*As described by Tarlow, infra.

**The summary, Capital Outlay Projects, 1963 - 1964, is reproduced as A&F Appendix Exhibit #14.

cited the design of a dormitory building as an example of one such unchallenging design project. This attitude was used to justify a criterion of mere competence in design, and the use of design contract awards as a form of political patronage.

The consequences of this attitude can be illustrated by the outcome of one of the several projects awarded to Desmond & Lord, a design firm which certainly profitted from the recommendations Tarlow made to Commissioner Waldron.*

Desmond & Lord, in 1964, received a contract for site work at Cape Cod Community College. (See A&F Appendix Exhibit #4.) This project, designed in its entirety by Desmond & Lord, eventually encompassed thirteen separate contracts, including the design of a classroom and science building, an administration building, a library, a commons building, a lecture hall, an auditorium, a gymnasium, and a maintenance building. The current condition of the buildings at Cape Cod Community College is detailed in another section of this report.** Suffice it to say here that there are serious problems, common to all buildings at the college, which have their origin in the structural design of the buildings.

F. Conclusion

The foregoing account describes the close relationship which existed during Governor's Peabody's administration between fundraising activities and the award of state design contracts. Endicott Peabody, Sherwood Tarlow and William Waldron all testified before the Commission that, as a policy matter, design contracts were considered to be patronage and were treated as such. Governor Peabody implemented this policy by hiring Tarlow, a fundraiser and member of the Patronage Committee, to participate in the designer selection process. The favoritism which the administration demonstrated in the award of contracts was not a generalized favoritism, but one specifically tied to the political contributions of specific architects, as evidenced by the testimony of Frank Masiello. The administration regularly awarded contracts to firms that only had to be minimally qualified, rather than making serious efforts to determine the best qualified firm. This practice affected the quality of buildings produced, and left a legacy of faulty buildings that pose both a financial cost to the Commonwealth for their repair and a human cost to the users who must work and live in poorly functioning buildings.

*Tarlow's recommendations to Waldron and the basis for these recommendations have been described in the previous three sections.

**See Cape Cod Community College, in Volume 6 of this Report.

III. VOLPE ERA (1965 - 1968)

A. BEFORE THE ESTABLISHMENT OF THE DESIGNER SELECTION BOARD

1. Introduction

John A. Volpe succeeded Endicott Peabody as Governor in January 1965. His Commissioner of Administration and Finance during this two year term was John J. McCarthy. Commissioner McCarthy, throughout most of his term, was charged with selecting designers for the award of state contracts under the same statutory system in effect during the time Waldron was Commissioner.* These contract award procedures changed late in 1966 when the Designer Selection Board (DSB) was created to review applicants and to submit a list of three or more designers to the Commissioner, from which he made his selection.**

Two sources of evidence cast some light on how the designer award process operated during these years prior to the creation of the DSB. First, Frank Masiello described in his public testimony before the Commission on March 27, 1980 how he continued his fundraising activities, this time for Governor Volpe, in order to retain previously received state contracts and to obtain new ones. There was, however, one difference. This time, Masiello established with Albert "Toots" Manzi, in advance of any fundraising activities, that his design firm would receive state contract awards in proportion to the money he contributed or caused others to contribute.*** Second, in April 1966, a Special Committee of the Senate was established to investigate how the designer for the UMass Medical School was selected. This investigation developed evidence that Governor Volpe's brother Peter was involved both in fundraising activities and in the recommendation of designers for the award of state contracts.****

2. Frank Masiello

The firm of Masiello & Healy***** received two state contract awards during Volpe's term as Governor in addition to receiving continued services contracts for projects already awarded the Masiello firm in prior administrations. One of these new contracts, an addition to the Reception Diagnostic Center at the Judge Connelly Youth Center, was awarded to the Masiello firm prior to the creation of

* 1962 Acts & Resolves, chapter 757.

** 1966 Acts & Resolves, chapter 676.

*** Frank Masiello's testimony is set forth in the following sub-section, entitled Frank Masiello.

**** The results of this 1966 investigation are summarized below in the sub-section entitled Special Senate Committee Investigation.

***** The firm Masiello & Associates became Masiello & Healy on 11/1/65, but later resumed its earlier name. The history of the firm and the investigation of it by the Commission is detailed elsewhere in the final report.

the Designer Selection Board.

Masiello, in his public testimony before the Commission on March 27, 1980, described the award of the Judge Connelly Youth Center contract as being the result of the financial support he provided the Volpe campaign in 1964 and thereafter. Before making any contributions to the Volpe campaign, Masiello first met with Albert "Toots" Manzi, Volpe's Worcester County Co-ordinator, at his meat market to establish ground rules. Masiello said he would agree to support the Volpe campaign financially if Manzi would assure in advance that his support would result in additional state design contracts from the Volpe administration.¹³⁶ This Manzi did:

Q. What was your discussion with Mr. Manzi in his market on that occasion?

A. The substance of the conversation was essentially I agreed to financial support or assisting Governor Volpe, and the deficit that they were attempting to overcome. I would purchase tickets to the fundraising activity, but it would be on the premise or on the assurance that if I did undertake these activities that I wanted a firm promise that we would be allowed to continue on our existing contracts that we had in effect at that time, new contracts we had received, and hopefully be assured that when another capital outlay program came out in the future that we would be favorably considered for possibly another project.

Q. With reference to the building construction contract?

A. The first reference to Concord and Danvers was that he said you have got two very large contracts in Concord and Danvers, and we expect that because of those two projects that are continuing that were given to you during our first administration, that we expect that you are going to give us -- we would expect that we would get a very substantial political contribution on behalf of the Volpe Administration to let you continue on those contracts or extend you on those contracts.

I got very upset with that. I said, Toots, I am getting sick and tired of this whole darn thing. Every time a new administration comes in it is the same old thing. They are doing you a favor of continuing you on a contract that I have already paid my dues on.

I am getting sick and tired of being taxed two and three times for the same project I received in other administrations. I will be very happy to assist you in helping anyway that I can with the understanding that I don't want to hear any more about Concord or any more about Danvers.

So, after that discussion, he said, well, okay. He said, I will tell you what. He said, your involvement in obtaining additional work from this administration will be directly in relation to the amount of money you contribute and the amount of money you raise for fundraising activities whenever I request it of you.

I agreed that that would be fine, and we proceeded on that basis.¹³⁷

Frank Masiello then began actively to raise money for the Volpe campaign. He contributed from \$4,000 to \$5,000 of his own money, and raised an additional \$7,000 to \$11,000 from consultants hired by his firm.¹³⁸ Whenever he had accumulated \$4,000 - \$5,000 in contributions, Frank Masiello would deliver the money to Manzi either at his market or in the State House.¹³⁹

After the 1965 capital outlay was enacted, Frank Masiello asked Manzi whether his firm was being considered for a project.¹⁴⁰ Manzi checked and, approximately one week later, asked Masiello to meet him the next day in the Governor's office. Masiello met Manzi in the Governor's office. They went together to the office of Joseph Silvano, Volpe's Patronage Secretary, where Silvano told Masiello that he would be awarded the Judge Connelly Center contract:

We then went downstairs to a low floor and went to Joe Silvano's office. Again, he [Manzi] didn't bother to knock or anything. Again, he just opened the door and we went directly into Silvano's office, and we sat down in front of him and Toots explained to Joe that I had been a supporter and financial contributor to Governor Volpe, he did not identify the magnitude of my involvement other than that I was a good supporter of the Governor's.

He said have you got anything we can tell Frank, and he says yes, he had. So, he had a list of several papers on his desk, and he thumbed through three or four pages before he finally settled on a page, and he looked down and he said we are going to give you a project, and I said what is the project. He says that project is the Walter J. Connelly School for Juveniles.¹⁴¹

The Judge Connelly Youth Center contract was in fact awarded to Masiello & Healy on February 9, 1966.*

3. Special Senate Committee Investigation

In April 1966 a Special Committee of the Senate was established to investigate the selection by the Commissioner of A&F of an architectural firm to design the University of Massachusetts Medical School.** Although that investigation focused primarily on one design contract, the UMass Medical School award, the Special Senate Committee received further evidence concerning other contract awards. The evidence developed in the course of their investigation indicates that those legally responsible for design contract awards consulted with Governor Volpe's brother, contractor S. Peter Volpe, before making the selection.

* The Judge Connelly Youth Center award is also discussed in another section of this report, entitled Gentile/Danvers/Concord.

** The seven members of this Special Senate Committee were: Senators James Kelly, Jr. (Chairman), Beryl Cohen, John Moakley, Andrea Nuciforo, James Burke, John Parker, and Philip Graham.

The background of this award is as follows. The University of Massachusetts Board of Trustees in 1964 began an organized and comprehensive search for an architect to design the proposed medical school.¹⁴² After consulting with nationally recognized experts, developing a set of criteria, participating in numerous discussions and interviewing potential candidates, the Board of Trustees unanimously voted on September 16, 1965 that the medical school be designed by The Architects Collaborative of Cambridge, in association with Ellerbe Architects of St. Paul, Minnesota, and that this recommendation be communicated to the Executive Office of Administration and Finance.¹⁴³ Meetings and correspondence between UMass and A&F officials then followed.

Despite conflicting evidence before the Special Senate Committee concerning what was actually said, UMass officials (President John Lederle, Treasurer Kenneth Johnson, Trustee Emerson, and Dean Lamar Soutter) understood from a statement by Governor Volpe during a meeting on October 26, 1965 at the Somerset Hotel, that the Governor had directed A&F Commissioner John J. McCarthy to select the architectural team recommended by the University.¹⁴⁴ Commissioner McCarthy testified before the Special Senate Committee that sometime after this October 26, 1965 meeting and before January 7, 1966, he discussed the design firm of Ritchie Associates with Governor Volpe as an alternative to the UMass Trustees' recommendation.¹⁴⁵ The Governor reacted positively and suggested to McCarthy that he consult with his brother, Peter Volpe, about the architects under consideration.¹⁴⁶

Walter O'Connell, McCarthy's Deputy Commissioner, testified before the Special Senate Committee that as early as September, 1965 (before UMass had made its architect selection recommendation to Governor Volpe), Commissioner McCarthy had suggested to him that he consult with Peter Volpe concerning another matter - the cost of an HEW complex.¹⁴⁷

On January 7, 1966, BBC Director Horace Chase, A&F Commissioner John McCarthy, Deputy Commissioner Walter O'Connell and S. Peter Volpe met to discuss the architect being considered for the UMass Medical School contracts.^{148*149} Peter Volpe indicated that The Architects Collaborative (one of the firms recommended by the UMass Trustees) had lost a key man, and expressed the opinion that Ritchie Associates was highly qualified and had experience in hospital

* An unanswered question is Chase's involvement in the Dec. 1962 and Jan. 1963 attempt of the first Volpe Administration to award the contract to Ritchie. The firm seems to have been the preferred choice of the first administration. The agenda for two A&F meetings in late 1962 indicates a recommendation to appoint Ritchie. The University in late 1962 voted that the selection not be made until a dean appointed, policies and programs formed and a site chosen. A&F subsequently voted to make no appointment at that time, but resurrected Ritchie as its first choice during Volpe's second administration, despite the intervening selection process by UMass.¹⁴⁹

design.^{150*151}

McCarthy and Peter Volpe testified before the Special Senate Committee that during this meeting and after discussing The Architects Collaborative and Ritchie Associates, Peter Volpe called Donald Ritchie, the President of Ritchie Associates.¹⁵² Peter Volpe did this at McCarthy's request because he knew the people at Ritchie, whereas the others did not. Peter Volpe's account of the call is that he told Donald Ritchie to get in touch with McCarthy if his firm wanted to be considered for the project.¹⁵³ According to Peter Volpe, this was his only contact, by phone or in person, with Ritchie concerning the UMass project.¹⁵⁴

Donald Ritchie's testimony before the Special Senate Committee differed: he remembered making an appointment over the phone with Peter Volpe to meet with McCarthy on January 10, 1966.¹⁵⁵ This signifies greater involvement by Peter Volpe than he had indicated. Ritchie subsequently attended this meeting, at which O'Connell and Peter Volpe were also present.¹⁵⁶ His testimony contradicts that of McCarthy, who testified that he only met with Peter Volpe once between October 26, 1965 and January 12, 1966 concerning the selection of architects.¹⁵⁷

On January 12, 1966 Commissioner McCarthy announced that Ritchie Associates and Campbell, Aldrich and Nulty were appointed as architect for the UMass Medical School.¹⁵⁸ When the University objected, Ellerbe was also included, but in a greatly reduced role.

BBC Director Horace Chase also testified before the Special Senate Committee that at the earlier January 7, 1966 meeting, Commissioner McCarthy instructed him to check his future recommendations for the award of design contracts with Peter Volpe.¹⁵⁹ Chase had never consulted with a contractor concerning contract awards during his twelve years as Director of the BBC and felt that this was an unusual request.¹⁶⁰ Chase testified that McCarthy's directive gave him the impression that Peter Volpe was representing McCarthy.¹⁶¹

Chase testified that he subsequently met Peter Volpe in the Malden office of the Volpe Construction Co. on three separate occasions in February and March 1966.^{162**} Their discussions concerned various new projects, but not the UMass contract. Chase had made up schedule worksheets and reached the point of informal recommendations which he asked Peter Volpe to review, as McCarthy had

* Peter Volpe, Walter O'Connell and Horace Chase agreed in their testimony before the Special Senate Committee that Peter Volpe expressed these opinions at the January 7, 1966 meeting.¹⁵¹

** The testimony of Chase and Peter Volpe revealed a slight discrepancy concerning the dates of these meetings.

requested. Peter Volpe and Chase met another time that month to discuss other projects. Chase again asked Peter Volpe to review his suggestions. A third meeting occurred in March. Each meeting lasted about an hour. In total, Chase asked Peter Volpe for his opinion on twenty-nine new projects and seventeen study projects. Chase stated that he himself made the recommendations, not Peter Volpe, and that he merely discussed the qualifications of the recommended selections with Peter Volpe so that he could tell McCarthy and O'Connell that the architects were, in Peter Volpe's opinion, qualified.

Although he was present at the January 7, 1966 meeting when McCarthy instructed Chase to consult with Peter Volpe on future assignments, Peter Volpe, along with O'Connell, denied to the Special Senate Committee that McCarthy made this request.¹⁶³ O'Connell did testify, however, that at some point McCarthy had expressed to him the desirability of consulting Peter Volpe in connection with Chase's recommendations.¹⁶⁴

During his testimony Peter Volpe did acknowledge that he participated in these meetings with Chase.¹⁶⁵ He testified, however, that he did not select or promote any candidate--that Chase made the recommendations. Peter Volpe said that he, for the most part, praised the selections, did not cross out any names and made only two reassignments. Whatever the degree and nature of his involvement, however, the fact remains that his participation was a regular and continuing occurrence.

Campaign fundraising activities appear to have had a role in the selection process. Ritchie Associates, for example, is reported to have contributed to Governor Volpe's 1962 and 1964 campaigns.* Although Peter Volpe denied receiving any campaign contributions from architects,¹⁶⁶ an architect named David Shields told the Special Senate Committee that in September 1965 he gave Peter Volpe a \$1,000 check for a Governor Volpe testimonial dinner after discussing with Peter Volpe his desire for state work.¹⁶⁷ Subsequently, in February or March 1966, David Shields was awarded a design contract for a Boston State Hospital additions project.^{168**} Peter Volpe, in his testimony, denied any knowledge of this contract award, and stated that he had no recollection of Shield's asking for his help in obtaining state contracts.

* Ritchie's political contributions were not developed in the Special Senate Committee's Report. Newspaper articles reporting on the Committee's hearings, however, indicated that the Committee heard testimony to the effect that Ritchie contributed to Governor Volpe's 1962 and 1964 campaigns. A figure of \$500 was mentioned.

** Although the Special Senate Committee report gave February 1966 as the date of this contract award, information obtained by the Special Commission suggests March 9, 1966 as the date.

As a result of its hearings, the Special Senate Committee recommended six campaign finance bills.^{169*} These bills concerned improving the enforcement of the campaign finance and disclosure laws which existed in 1966, restricting the misuse of campaign funds, extending the definition of campaign contributions to include testimonial dinners, restricting corporate contributions, controlling contributions by consultants and establishing a penalty for certain corrupt election practices. The legislature failed to enact the bills.

The 1966 Special Senate Committee also recommended the establishment of the Designer Selection Board.¹⁷⁰ Their bill, enacted late in 1966, imposed some constraints on the award of design contracts.** However, as the next section of this report indicates, the political process was kept out of design contract awards for only a few months.

* Senate numbers 936-940 and 942.

** See 1966 Acts and Resolves, Chapter 676.

B. AFTER THE ESTABLISHMENT OF THE DESIGNER SELECTION BOARD

1. A&F Commissioner Jonn McCarthy

The legislation establishing the Designer Selection Board (DSB) became effective on September 5, 1966.¹⁷¹ It created a Designer Selection Board with responsibilities which included the following: establishing methods of selection, including criteria; advertising projects after they are authorized by the capital outlay budget; soliciting the names of interested designers; gathering and maintaining current information concerning the organization, experience and qualifications of interested architects and engineers; reviewing the information submitted by applicants; and, most importantly, recommending to the Commissioner of A&F at least three designers for each project.¹⁷²

Governor Volpe appointed Earle Littleton Chairman of the Designer Selection Board, and Horace Chase (Director of BBC, ex officio), Philip Bourne, Robert Meserve, Walter Pulsifer and Stanley Porter as the five other members of the DSB.¹⁷³ The statute also provided for a seventh voting member who would be a representative of a specific project's user agency. A&F Commissioner McCarthy designated Frederick Kussman (Supervisor of Fiscal Management, BBC) to serve as Executive Secretary.¹⁷⁴ The first meeting of the DSB took place on December 6, 1966.¹⁷⁵ Present at this meeting, in addition to the Board members, was A&F Deputy Commissioner Walter O'Connell.¹⁷⁶

This first meeting established criteria for evaluating competing design firms. The December 6, 1966 DSB minutes state:

At the invitation of the Board, Walter O'Connell, Deputy Commissioner, Administration and Finance, reviewed a weight and scoring evaluation criteria system. He answered questions raised by the members and guided the Board through a hypothetical project. He recommended the basic criteria formula be supplemented by specific evaluation requirements of projects placed before the Board for their action.

The Board agreed it desirable to anticipate appointments on future capital outlay appropriation acts and instigate a procedure to initially obtain and evaluate designers' applications for appointment prior to the actual passage of the act, possibly after the House of Representatives bill is filed. This will offset the time lost between enactment of the appropriation and selection of a designer.^{177*}

DSB Chairman Littleton publicly testified before the Commission on April 1, 1980, that the DSB met with A&F Commissioner McCarthy sometime later in December 1966.¹⁷⁸ At that time, in response to Commissioner McCarthy's request, the DSB

*A copy of the December 6, 1966 DSB minutes is reproduced as A&F Appendix Exhibit #15.

agreed to list, in order of preference, the three or more designers which they submitted to the Commissioner. Under this system, the Commissioner knew which design firm was the leading candidate in the judgment of the DSB. And, under this system, the Commissioner did not have to choose arbitrarily one of the three firms but, rather, had a single preferred firm to select in the absence of other information justifying a different choice.

McCarthy's request that the DSB rank design firms came in the wake of the Special Senate Committee report released in October 1966. This report had concluded that, "Commissioner McCarthy and Deputy Commissioner O'Connell willfully and knowingly abdicated their responsibilities under the law and their obligations to the public interest by their complaisant acquiescence in a highly unusual and extraordinarily irregular selection process ..."179 The Special Senate Committee had called for, "Commissioner of Administration and Finance John J. McCarthy and Deputy Commissioner Walter O'Connell to resign forthwith from their positions of public responsibility for their willful betrayal of the public trust in the matter of the selection of architects ..."180 It had recommended that Governor Volpe take appropriate remedial action if McCarthy and O'Connell failed to resign. Finally, the Special Committee had recommended that the Attorney General investigate the selection process concerning the U Mass Medical School contract.181

During McCarthy's last months as Commissioner, he made design contract awards under the newly instituted DSB system. Without exception, McCarthy awarded each of these design contracts to the firm deemed to be best qualified by the DSB.* These designers and contracts were as follows:

<u>FIRM</u>	<u>CONTRACT</u>	<u>AWARD DATE</u>
Wendall T. Phillips	Repairs to Milford Armory	1/3/67
Wendall T. Phillips	Repairs to Clinton Armory	1/3/67
John Milo Associates	Improvements to Util. Dist System Framingham State College	1/3/67
Bednarski, Falconer, Stein	Renovations to Mental Health Center Greenfield	1/3/67
S.S. Eisenberg Assoc.	Complete First Floor, Outpatient Building Boston State Hospital	1/3/67
Carl Libby, d/b/a Northeast Agr. Eng. Service	Improvements to Dairy, Grafton State Hospital	1/3/67
Francis J. Linehan, Jr. & Associates	Improvements to Util. Dist. System, Fernald State School	1/3/67

*The Special Commission obtained the information concerning the DSB ranking of the firms to which McCarthy gave contracts from the December 21 and December 28, 1966 DSB minutes. These are reproduced as A&F Appendix Exhibit #16. The Commission was unable to obtain the letters which the DSB sent to Commissioner McCarthy and which listed the recommended firms in order of preference.

<u>FIRM</u>	<u>CONTRACT</u>	<u>AWARD DATE</u>
Melvin F. Jay & Assoc.	Alterations to School, MCI-Norfolk	1/3/67
Martin J. Cullity	Renovate Roof Areas, Lyman School for Boys	1/3/67
Dingman Fauteux	Renovate Old School Building, Lyman School for boys	1/3/67

(A more detailed version of this chart is reproduced as A&F Appendix Exhibit #17.)

2. A&F Commissioner Anthony DeFalco

Anthony DeFalco became Commissioner of A&F on January 5, 1967. His background was that of a close political adviser to Governor Volpe. DeFalco's February 27, 1980 and April 9, 1980 private and public testimony before the Commission indicate that, prior to this appointment as Commissioner by Governor Volpe, he had served as the Governor's Chief Secretary since January 1965. He took a leave of absence in June 1965 to become the Governor's Campaign Director for the 1966 election, then later resumed his position as Chief Secretary in November 1966.¹⁸²

DeFalco publicly testified before the Commission on April 9, 1980 that, as Campaign Director, he was responsible for the organization of the campaign throughout the state including, "putting together a budget for the campaign, overseeing that budget and contracting for the expense sheet ..."¹⁸³

DeFalco further publicly testified concerning his dealings with people in charge of the campaign's various field offices. During the 1966 campaign Republican fundraiser Albert ("Toots") Manzi was responsible for the city of Worcester and the surrounding areas in Worcester County.¹⁸⁴ Manzi reported to DeFalco.¹⁸⁵ Governor Volpe, in a transcribed interview on March 24, 1980 with Commission staff, stated that DeFalco, as his Campaign Director, would have been aware of the work done by Manzi in the 1964 and 1966 campaigns.¹⁸⁶

At the beginning of DeFalco's term, he received correspondence from the DSB, "explaining the Board's priority listing of recommendations."* The DSB continued to follow its established practice of ranking firms in order of preference during the first several months of DeFalco's term as Commissioner.**

DeFalco publicly testified that he never received ranked recommendations of design firms from the DSB.¹⁸⁷ This testimony, however, conflicts with the DSB minutes from January 1967 through June 1967 (reproduced as A&F Appendix Exhibit #19), and a May 21, 1967 Boston Globe article which will be discussed below and

*The January 11, 1967 DSB minutes indicate that DeFalco received this correspondence. These minutes containing the above quote are reproduced as A&F Appendix Exhibit #18.

**The January 1967-June 1967 DSB minutes document the ranking. These are reproduced as A&F Appendix Exhibit #19. The Special Commission was unable to obtain copies of the January 1967-June 1967 letters to DeFalco from the DSB which also expressed the DSB's ranking.

then reproduced as an appendix exhibit.

The first group of letters from the DSB to Commissioner DeFalco were acted upon on January 31, 1967. Only one of the nine contracts included in this group was awarded to other than the top ranked firm. The exception was the award of a Youth Forestry Camp boys' dormitory to the firm of Lloyd M. Hendrick.*

The next group of design award selections by Commissioner DeFalco occurred in March 1967. At that time, DeFalco began to depart sharply from the prior practice of selecting the firm ranked number one by the DSB. Ultimately, in June 1967, DeFalco would ask the DSB to discontinue this practice of ranking firms in order of preference, and the DSB would comply with his request.**

During that time, from March 1967 until June 1967, DeFalco awarded twenty-one design contracts. Eleven of these contracts were awarded to firms which were not ranked number one by the DSB. In fact, six of the firms awarded contracts were at the very bottom of the DSB's preferential ranking.***

The firms awarded contracts by DeFalco which were not ranked at the top of the DSB list are as follows:****

<u>DATE OF AWARD</u>	<u>CONTRACT</u>	<u>DESIGNER</u>	<u>DSB RANKING</u>
3/13/67	Renovations, Western Mass. Hospital	Drummey, Rosane, Anderson	4
3/15/67	Classroom Building, Lowell Technical Institute	Coletti Brothers	2
3/29/67	Headquarters Building (including land acquisition), Department of Public Safety	Strickland, Brigham & Eldredge	2
4/27/67	Future Expansion, Quinsigamond Community College	Herbert L. Bogen & Associates	2
4/27/67	Roof Renovations, State House	Universal Engineering	3

*For a chart describing the contract awards by DeFalco, see A&F Appendix Exhibit #20. Because the Special Commission was unable to obtain the January 1967-June 1967 DSB letters to DeFalco as evidence of the ranking system employed by the DSB and communicated to DeFalco, the DSB minutes from the same time period, which also document the ranking, have been reproduced as A&F Appendix Exhibit #19.

**DeFalco's testimony, Littleton's testimony, and the June 14, 1967 DSB minutes serve as support for this statement. The evidence will be presented below.

***For a chart describing the contract awards by DeFalco, see A&F Appendix Exhibit #20. For the DSB minutes which document the DSB's ranking, see A&F Appendix Exhibit #19. A chart statistically analyzing these awards is reproduced as A&F Appendix Exhibit #21.

****Ibid.

<u>DATE OF AWARD</u>	<u>CONTRACT</u>	<u>DESIGNER</u>	<u>DSB RANKING</u>
4/27/67	New Nursing Home, Tewksbury Hospital	Robert Charles Assoc.	3
4/27/67	School for Mentally Retarded, Worcester State Hospital	Hoyle, Doran & Berry	2
4/27/67	School for Mentally Retarded, Boston State Hospital	I. Richmond & C. Goldberg	4
4/27/67	School for Mentally Retarded, Springfield State Hospital (Gentile School)	Masiello & Healy	2
4/27/67	New Elevators, New Bedford State Pier	Tallman, Drake & Guay	3
6/12/67	Renovations to Create Technical School at Springfield Armory Site	Caolo & Bienek	3

Many of the firms which are listed above have been the subject of Commission investigations discussed elsewhere in the report, or are firms concerning which there is evidence of political activity. As an earlier section of this A&F report indicated,* Frank Masiello testified that David Nassif, the principal of Universal Engineering, was among the architect contributors present at the fundraisers held at the Statler Hilton Hotel by Sherwood Tarlow.¹⁸⁸ Universal Engineering not only received contracts in 1964 during the Peabody administration and in 1967 and 1968 during the Volpe administration (besides the April 27, 1967 award, there were ones on December 27, 1967 and October 17, 1968; see A&F Appendix Exhibit #20), but also in 1970 and 1974 during the Sargent administration (the November 18, 1970, February 20, 1974 and September 25, 1974 awards will be discussed in a later section of the A&F report.**). With regard to the Sargent administration, Donald Dwight (who was A&F Commissioner from January 1969 until August 1970 and Lieutenant Governor from January 1971 until December 1974) testified in a private session before the Commission on January 30, 1980*** that Republican fundraiser Albert ("Toots") Manzi approached him on at least one occasion on behalf of Universal Engineering after it had been nominated by the DSB for a contract.¹⁸⁹ Dwight testified that Manzi told him that, "Universal is a wonderful firm and anytime they come to your attention I think you should give a recommendation."¹⁹⁰ Dwight understood Manzi's interceding on behalf of Universal Engineering to be connected with its political support, whether

*See Peabody Era.

**See Sargent Era.

*** The Commission read Dwight's 1/30/80 private testimony into the public record on 4/14/80.

contributions or services.¹⁹¹ Other sections of the final report discuss Universal Engineering in greater detail.*

Governor Volpe, in an interview with the Special Commission on March 24, 1980, stated that DeFalco would have listened to a recommendation from Manzi concerning design contract awards:

Q. Under the Designer Selection Board procedure, and all three firms who qualified for the particular contract, do you think Mr. DeFalco's judgment would have been influenced by a recommendation from Mr. Manzi if all three were qualified?

A. It's very rare that three firms, A, B and C are all equally qualified for a particular assignment. But, you're asking it as a hypothetical question. I would only say that I don't suppose that Mr. DeFalco would hold it against firm B if that's the one that let's say Mr. Manzi had recommended purely because Mr. Manzi recommended them. So, it's hard to answer on a hypothetical basis what his decision would be. I can only say that I think Tony would try to do the right thing, that was his way of life.

Q. I'm just trying to get a sense of as I understand your answer, he would never make say an appointment off the list of DSB to somebody that shouldn't get the job? You think that he would at least listen and give some recommendations to a recommendation by Mr. Manzi?

A. He would listen and give some consideration, yes.¹⁹³

However, Governor Volpe could not say with certainty whether, during his administration, Manzi was soliciting, for contributions, those doing business with the state,¹⁹⁴ and he did not know whether Manzi had any input into design contract awards at that time.¹⁹⁵

Other examples of design firms which DeFalco selected, although not ranked first by the DSB, which are also discussed elsewhere in the report, include the Coletti Brothers,** Tallman, Drake & Guay, and Robert Charles Associates. Tallman, Drake and Guay was later awarded the Hingham District contract during the Sargent administration under circumstances described elsewhere in the report.*** This firm was a frequent contributor during the Sargent administration.**** And Robert Charles Associates, a frequent recipient of local housing authority contracts(as discussed in the Driscoll-Weber section of the report)***** was a firm which DeFalco selected from the bottom of the DSB ranked list and whose political ties drew the attention of a Boston Globe

* For further information on Universal Engineering, see Gentile/Danvers/Concord and Testing and Boring sections of the report.

** See sections of this report discussing the Coletti Brothers design firm.

*** See Hingham District Court.

**** See Sargent Era.

***** See Driscoll-Weber.

columnist on May 21, 1967:*

There is evidence that old political ties are sometimes still effective under the new system.

For example, the firm of Robert Charles Associates, which is not widely known for its design distinction but which bought a \$1000 "golden page" in Gov. Volpe's last campaign ad book, was chosen by Comr. DeFalco from the third spot on the selection board's list to design the new \$1.4 million nurses home at Tewksbury State Hospital.¹⁹⁶

It was this May 21, 1967 Boston Globe article which apparently prompted DeFalco to request DSB to list its recommended design firms alphabetically, and not in order of preference. Both DeFalco and Littleton concurred in testifying that the shift by the DSB to an alphabetical listing of recommended designers occurred at DeFalco's request.¹⁹⁷ Littleton further testified that the Boston Globe article prompted the change:

Q. Did he give you any specific reason why he requested that you submit them alphabetically, Mr. Littleton?

A. At some time or other, and I am not sure on the timing, four names were submitted to the Commissioner and I am not sure which Commissioner, but they must have been in priority in order for the facts to go together, and the number four person had been selected; and the Boston Globe said why did you pick number four and not number one, and it was then decided that if this was to be the usual hassle that we go off the priority rating at this time. In our judgment, we felt that in submitting three or four qualified architects that it didn't make any difference whether you picked one or two or three or four. They were all qualified to do the job, but we did feel that we didn't want to stay under the pressure of the press because somebody might pick four instead of one or two.¹⁹⁸

The written agenda for the May 31, 1967 DSB meeting made note of this Boston Globe article, instructing DSB members to, "Note the recent article appearing in the Boston Globe pertaining to the Design [sic] Selection Board."** And on June 14, 1967, the DSB minutes state, for the first time, "Utilizing agreed upon criteria the Board voted to submit to the Commissioner of Administration and Finance the nominees appearing in alphabetical order ...".***

In contradiction to what is stated in the DSB minutes, DeFalco, both in private and public sessions, testified before the Commission that he requested the change to an alphabetical listing immediately after he became Commissioner.¹⁹⁹ He testified that he never received a ranked list of design firms from the DSB.²²⁰ He did not admit to selecting any firms from lists containing preferential ratings by the DSB. DeFalco described his decision to request an alphabetical listing as being motivated by the desire to have sufficient discretion so that he would not be put in the position of having to

* This 5/21/67 Boston Globe article is reproduced as A&F Appendix Exhibit #22.

** The 5/31/67 agenda is reproduced as A&F Appendix Exhibit #23.

*** The 6/14/67 DSB minutes are reproduced as A&F Appendix Exhibit #24.

justify his failure to select the firm ranked number one:

- Q. Is it fair to say, sir, that it was your judgment that if the firms were ranked in an order of preference by the Designer Selection Board that you would be constrained to select the firm ranked number one by the Designer Selection Board?
- A. Yes. Obviously, because I had little wherewithal to second-guess or even judge the selection process of the Designer Selection Board, that if I had them in ranked order and this is the way I felt at the time, and it is certainly my own personal observation, that that would cause me to have go out and get more information and I just didn't think that was desirable for me to do.
- Q. Why did you not consider it desirable for you to get more information about firms that you were considering for the award of design contracts?
- A. I think the only answer I can give you to that question, if I had done that I might just as well have turned over the decision-making responsibility to that Board and not participated at all.
- Q. Sir, there would be no limitation to prevent you in fact from selecting any of the three firms no matter whether they were listed in order or not, is that correct?
- A. I have no problem with that. There is obviously no legal reason why I couldn't, but certainly to justify not taking their top ranked choice would have caused me to find some reason why I might not want to do that.
- Q. In other words, you would have to independently go out and get some information about these firms and come up with a good reason based on the information you gathered for not selecting the firm ranked number one by the Designer Selection Board?
- A. Yes. I want you to know that the picture arose in many instances as one of deception if there was adverse information that comes to you and you don't do something, but if there is no adverse information then you go ahead and approve.
- Q. Wouldn't you think that the selection process would be a more reasoned process if you knew which of the three firms was preferred by the Designer Selection Board based upon their evaluation of those firms and their ability to do the work and be in a position if you wanted to to gather other information on your own which might cause you to reach a different conclusion? Don't you think that would be a more rational selection process?
- A. Possibly, but the Office of Administration covered a wide range of responsibilities and really what we are talking about here is a very narrowed segment of that responsibility given the law that put the Designer Selection Board on the books.201

The only designer selection procedure which DeFalco testified that he used was "random selection."

- Q. ...[H]ow did you go about selecting the design firms to whom contracts were to be awarded during your term as Commissioner?
- A. I would randomly select a firm from the listing of three that were presented to me.
- Q. And what do you mean by saying you would randomly select a firm?
- A. Without having any system of keeping track of my selection I would not pick the same position each time. In other

words, first, second, or third at that moment in time.

Q. Let me see if I understand what you are saying. Under the system that existed after the creation of the Designer Selection Board, you as Commissioner got a letter from the Designer Selection Board listing the names of three or more firms to be considered for the award of a particular contract, is that correct?

A. That's correct, and there would be three qualified firms.

Q. And how were those firms listed, were they in alphabetical order or in some other order?

A. As I recall, they were alphabetically listed.

Q. Now, what did you do once you received this list from the Designer Selection Board?

A. This letter with their information in it would arrive in my incoming mail when I went over my mail. Invariably, I would find that correspondence and make a selection of one of the three from that list and then it would go into my out box and correspondence and [be] processed by my administrative secretary.

Q. And how did you determine which one of the three you would select?

A. Just strictly at random.

Q. Did you close your eyes and stab a pin at one or --

A. No. I would -- first I want to state we had very little personal knowledge of any architectural firms. Therefore it wasn't a matter of me recognizing names. It was merely that I would look at that letter and decided that I will pick number three from that letter or that was it, or number two or number one, or whatever that was and that is how it was.²⁰²

DeFalco stated under oath that no one participated with him in the designer selection decision, and that he never consulted with anyone.²⁰³ He testified in both private and public testimony before the Commission that he had no recollection that anyone from the Governor's office, "Toots" Manzi, Joseph Silvano, Peter Volpe, or Pat Volpe, ever communicated with him about a designer contract award.²⁰⁴ DeFalco so testified, despite the fact that he had ignored the DSB's declared preference on twelve occasions under circumstances which, by his own admission, made it difficult to ignore the DSB's expressed preference.

The lack of credibility in DeFalco's account of a random selection procedure without input from others is further illustrated by an examination of the evidence concerning the award to Masiello & Healy of the contract for the Gentile School for the Mentally Retarded. This award is among those DeFalco made between January and June 1967 when the DSB was still submitting ranked recommendations to DeFalco. DeFalco publicly testified that he made this decision through "pure random selection," without communicating with anyone else.²⁰⁵ Yet, the DSB ranked Masiello & Healy second among the three firms recommended.* And this is

* See chart describing DeFalco contract awards, reproduced as A&F Appendix Exhibit #20.

the first time the Masiello & Healy firm was ever recommended in any order by the DSB.

Given these objective facts, evidence for a more credible explanation of the selection of the Masiello firm may be found in the public testimony of Frank Masiello. Masiello applied for the Gentile School contract in response to a DSB advertisement.²⁰⁶ He was among the firms then interviewed by the DSB.^{207*} After the interview, and on or about March 30, 1967, Masiello received a call from Albert ("Toots") Manzi. Manzi told Masiello that his firm was one of those recommended by the DSB for the Gentile School contract. Manzi asked Masiello to come to his market to discuss this with him.²⁰⁸

Masiello went to the market. Manzi told him he could have the contract if he let Manzi select the consultant and if he agreed to make a substantial political contribution. Masiello agreed, and Manzi then sent him to meet with David Nassif of Universal Engineering to negotiate an engineering consultant fee. Masiello met with Nassif and found he wanted a consultant's fee which was 10% to 20% higher than customary. Masiello returned to Manzi and objected to using Universal Engineering as a consultant on those terms. After some negotiations with Manzi, Masiello agreed to an arrangement whereby he would pay Manzi \$25,000 in cash as the job progressed, and could use his own consultant (Charles Theodore Associates) instead of Universal Engineering (Manzi's choice).²⁰⁹ Masiello testified:

He then said, well, okay, I will give you Theodore if you go along with the \$25,000. So, quickly, in my mind, I thought well. I better discuss maybe another couple of ground rules with him.

I said, Toots, I said, I guess over the period of years while this job was under way I can probably handle that, but it is going to be with the understanding that there will be no up-front money paid and that we will make contributions to the campaign or make cash payments to you as the job progresses, but only in proportion to the fees that we receive.

This was essentially the same thing I told him when we were discussing the DMJM project at the Holyoke Community College. He wasn't too thrilled with that. He said, that one I am going to have to check back on. He said, I don't think I can get my people to go along with it.

I said fine. I said, go ahead and do this. Sometime later, probably maybe a week later he called me up and he said, Congratulations. He says you are going to be appointed to the Joseph P. Gentile School, and I hope that you will remember that you did make a commitment and how much the commitment was for.

I said yes, Toots. I do remember, and I will keep the commitment, but it is going to have to be on the basis that I defined at our meeting. This at that point appeared to be satisfactory to him.²¹⁰

* Masiello's firm was interviewed by the DSB on 3/22/67. See 3/22/67 DSB minutes, reproduced as A&F Appendix Exhibit #19.

Masiello's firm was, in fact, awarded the Gentile School contract by DeFalco. DeFalco's decision was transmitted to the BBC by letter dated April 27, 1967, almost one month after the DSB submitted its recommendations to DeFalco on March 30, 1967.*

Additional evidence which tends to contradict DeFalco's testimony that his contract award decisions were randomly selected are his consistent pattern of contract awards to Universal Engineering, the firm which Manzi first asked Masiello to use as a consultant as a condition for receiving the Gentile School contract. Universal Engineering appeared three times** on the DSB lists of firms submitted to Commissioner DeFalco.*** In March 1967, on the only occasion it was ranked by the DSB, it was ranked third among three firms.**** Yet, on all three occasions, it was selected by DeFalco for the award of a design contract.***** Is this true random selection, or is this the deliberate selection of a firm at Manzi's request?*****

Further evidence which rebuts DeFalco's description of a random selection process in design contract awards is the evidence concerning the award, in July 1968, of the Holyoke Community College contract to the California design firm of Daniel, Mann, Johnson & Mendenhall (DMJM). This contract was awarded at a time when the DSB was listing recommended design firms in alphabetical order.

DeFalco indicated his selection in this case, as in all others, by placing his initials, "APD," on the DSB letter next to the name of the design firm he

* For the selection date, see the chart reproduced as A&F Appendix Exhibit #20. The Commission was unable to obtain the early transmittal letters from DeFalco to the BBC indicating his award decision, but the date of the Gentile School award was corroborated by other DSB documentation. For the date of the DSB recommendations to DeFalco, see the 3/30/67 letter from the DSB to DeFalco, reproduced as A&F Appendix Exhibit #25. See also the 3/29/67 DSB minutes, reproduced as A&F Appendix Exhibit #19.

** See chart describing DeFalco contract awards, reproduced as A&F Appendix Exhibit #20; 3/22/67 DSB minutes, reproduced as A&F Appendix Exhibit #19; 12/14/67 DSB letter to DeFalco, reproduced as A&F Appendix #26; and 10/14/68 DSB letter to DeFalco, reproduced as A&F Appendix Exhibit #27.

*** By contrast, Universal Engineering appears on five occasions on the DSB lists submitted to Commissioner McCarthy. The firm was never ranked at the top of these lists and, consequently, was never selected by Commissioner McCarthy for the award of a design contract. See chart describing McCarthy awards, reproduced as A&F Appendix #17.

**** Ibid.

***** Ibid.

***** Dwight testified that, during the Sargent era, Manzi spoke to him on behalf of Universal Engineering. This testimony has been described in an earlier section of this report entitled Volpe Era: Establishment of the Designer Selection Board, and will be again described below in the section entitled Sargent Era.

selected.* DeFalco testified both privately and publicly before the Commission that he awarded the Holyoke Community College contract to DMJM through random selection and that he did not communicate with anyone, including Manzi, concerning this contract award.²¹¹ Yet, there appears to be a checkmark under the "D" portion of DeFalco's initials, which would suggest a deliberate, rather than random, process. However, the existence of a checkmark in this and other cases could not be confirmed through tests which were limited to those which would not affect the integrity of the document.** It should also be noted here that there are other alphabetical selection documents containing DeFalco's initials and checkmarks or "X" marks, which are inconsistent with a purely random selection process. These contracts include the following:***

<u>CONTRACT</u>	<u>SELECTED DESIGNER</u>	<u>DATE OF AWARD</u>
Boston State College, renovations	Alonzo Reed	12/13/67
Tewksbury Hospital	Ganteaume & McMullen	12/27/67
Taunton State Hospital, Mental Health Facilities	Elbridge Atwood Assoc.	2/13/68

The evidence presented to the Commission concerning the occurrences prior to the award of the Holyoke Community College contract**** discredits a random selection explanation of the award of this contract, particularly when this evidence is evaluated in the context of DeFalco's awards to the Universal Engineering and Masiello & Healy firms, discussed above. Frank Masiello publicly testified that, in April or May 1968, he, Stan Smith (a DMJM vice president), and Bruce Dunsmore (another DMJM employee) met DeFalco at his office in the State House, and explained to him their interest in obtaining a community college design contract.²¹² DeFalco, in his private testimony before the Commission, did not deny that such a meeting took place, saying that such meetings with people interested in state projects were a frequent occurrence during the time he was Commissioner. However, he stated that he had no specific recollection of the meeting.²¹³

* For a copy of the 6/28/68 DSB letter to DeFalco on which DeFalco wrote his initials, see A&F Appendix Exhibit #28.

** The testing performed was non-destructive (i.e., did not harm the document containing DeFalco's initials). Testing, therefore, was limited to microscopic and ink color examinations.

*** These selection documents are reproduced as A&F Appendix Exhibit #29 (12/7/67, 12/14/67, 2/1/68 DSB letters; 12/13/67, 12/27/67 and 2/13/68 DeFalco transmittal letters).

**** See the DMJM report for a detailed account concerning what happened regarding the Holyoke Community College contract.

Masiello further testified that, in late May or early June 1968, he received a telephone call from Manzi, who told him that he knew DMJM and Masiello were pursuing the Holyoke Community College contract, and wanted Masiello to come to his market and discuss this. Masiello met with Manzi later that day. Manzi knew of Masiello's and DMJM's prior meetings with DeFalco and with BBC officials, and told him not to try to go around him again. Manzi told Masiello that he was working to get DMJM the Holyoke Community College project, but would not do so unless it was understood that, because of Manzi's involvement, a \$70,000-80,000 cash contribution (approximately 10% of the anticipated design fees) would be forthcoming.²¹⁴

After Masiello described Manzi's demand to DMJM officials, he testified that he met with Manzi on two occasions at his market. They negotiated, and finally agreed upon the payment of a \$22,000 contribution by DMJM, subject to change depending upon the actual architectural fees paid under the contract, and subject to approval by "some people."²¹⁵ Manzi then told Masiello that DMJM would shortly receive an interview notice from the DSB.²¹⁶ The notice came as predicted, and DMJM was interviewed by the BBC on June 26, 1968.*

Masiello further testified that "within a day or two prior" to the interview, he, Smith and Manzi met.²¹⁷ At this meeting, DMJM agreed to pay Manzi \$22,000 in cash over a period of time for the Holyoke Community College contract, and Manzi agreed to make certain that DMJM was selected as designer once DMJM succeeding in getting on the list of three firms nominated by the DSB. The terms were left open with respect to additional design fees and whether additional payments by DMJM would be required.²¹⁸

In addition to this evidence of Manzi's involvement in the award of the Holyoke Community College contract, there is also evidence that others were active on DMJM's behalf. It appears, from two business cards stapled to a paper and found in the files of Donald Dwight, Commissioner of A&F (Dwight became Commissioner in January 1969, but some of the materials in his files predate January 1969), that on June 17, 1968, shortly after the DSB voted to interview DMJM, Dwight, who was then Chairman of Holyoke Community College's architect selection committee, met with Smith and William Heinkel. DeFalco's A&F files contain a letter addressed to Governor Volpe from Alberta Settle, the secretary of the selection committee chaired by Dwight, recommending that DMJM be awarded the Holyoke Community College contract.** From markings on the letter, it

* See copy of the 6/12/68 and 6/26/68 DSB minutes, reproduced as A&F Appendix Exhibit #30.

** This 7/1/68 letter from Settle to Volpe is reproduced as an appendix exhibit for A New Campus for Holyoke Community College (see Volume 3 of this Report.)

appears that Ray Fontana (the Governor's counsel) and Commissioner DeFalco saw the letter.

Masiello testified that a telephone call from Manzi, informing him that DMJM was about to be awarded the Holyoke Community College contract, was his first notification that DMJM would receive the contract. Masiello telephoned the good news to Stan Smith.²¹⁹ Smith and Harry Clausen, another DMJM representative, then came to Boston, arriving prior to or on July 9, 1968.²²⁰ Official notification of the contract award occurred by a July 9, 1968 transmittal letter from DeFalco to the BBC.*

DMJM also executed the Holyoke Community College design contract on July 9, 1968, the same day as the contract award.** It would appear from the sole fact of Stan Smith's presence in Boston on July 9, 1968 that advance notice of the award was brought to Stan Smith's attention.

In addition, the execution of a design contract on the same day as the award is an occurrence which DeFalco himself, in private testimony before the Commission, conceded is unusual:

Q. Sir, in your experience would it be unusual for a design contract to be awarded on one day and for the contract itself to be signed on the same day?

A. You asked me that earlier, and I said to you that anything the Commonwealth could do in one day would surprise me. That is all I can tell you. It would certainly surprise me, yes.

Q. And as I indicated to you earlier, the files indicate with respect to the Holyoke Community College contract that it was awarded and signed by the people to whom the contract was awarded on the same day. Do you have any explanation for that occurrence?

A. No, I don't. I was not aware that that happened. My knowledge of the state operations, as I say, it is unusual that anybody can do that.²²¹

It would thus appear that DMJM had advance knowledge that it would receive the Holyoke Community College contract, and that it received this information from Frank Masiello as a result of conversations which he had with Manzi. It further appears that the Holyoke Community College contract was awarded, not as the product of random selection done with no outside consultation, but, rather, as the result of action by DMJM and by Manzi. The evidence which the Special Commission obtained concerning the terms of the agreement reached between Manzi and DMJM and the payments DMJM eventually made is presented in an earlier section of this Report, entitled A New Campus for Holyoke Community College.

* This 7/9/68 letter is reproduced as A&F Appendix Exhibit #32.

** The executed page of the Holyoke Community College contract is reproduced as A&F Appendix Exhibit #33.

Finally, the pattern of design contract awards made by DeFalco throughout his term as Commissioner is not consistent with a random selection process. Through random selection, one would expect the selections to be about evenly distributed among the three positions (1,2,3) within the groups of contracts being chosen at one time. It was DeFalco's testimony that he made his decisions at one time concerning the DSB recommendation letters which came to him as a group.²² The following chart, which compares the contracts awarded by DeFalco, shows that there is rarely any distribution within any of these groups which reflects a random pattern.

DEFALCO SELECTIONS*

SELECTION DATE	TOTAL NO. OF SELECTIONS	DSB RANKING OF SELECTED FIRMS			
		1	2	3	4
1/31/67	9	8	1		
3/8/67	1	1			
3/13/67	2	1			1
3/15/67	1		1		
3/29/67	1		1		
4/27/67	14	7	3	3	1
6/12/67	2	1		1	

		ALPHABETICAL POSITION OF SELECTED FIRM ON DSB LETTER			
		1	2	3	4
6/26/67	1			1	
7/24/67	1	1			
12/13/67	6	1	2	3	
12/27/67	6	2	2	2	
12/29/67	4	2		2	
1/17/68	1			1	
1/19/68	6	5	1		
2/13/68	3	2	1		
2/14/68	2	1	1		
3/5/68	2			2	
3/20/68	2			2	
3/25/68	6	3	2	1	
4/2/68	2	1	1		
4/17/68	1	1			
6/25/68	2	2			
7/9/68	1		1		
9/25/68	1		1		
10/9/68	9	2	1	6	
10/18/68	1			1	
11/27/68	1	1			
12/3/68	1	1			

For example, on January 19, 1968, six decisions were made, five of the six contracts going to firms in first position on DSB's alphabetical list. Between January 18, 1968 and March 4, 1968, DeFalco made eleven contract awards. Eight of these awards went to firms in first position and none to those in third position. On March 5, 1968 and March 20, 1968, DeFalco awarded a total of four contracts, all to firms in third position.

* Chart does not reflect outcome of projects (e.g., if later discontinued or reassigned). Chart does not include advisory decisions on 4/26/67, 5/19/67 or 8/4/67. Statistics culled from chart on DeFalco awards, reproduced as A&F Appendix Exhibit # 20, and relevant DSB minutes and letters.

On June 25, 1968, DeFalco made two awards, both to firms in the first position -- Colletti Brothers and Desmond & Lord. These two contracts each had an estimated construction cost of three million dollars or more. Of further interest, the Colletti Brothers firm appeared only twice in the DSB list of recommended firms during the time DeFalco was Commissioner. It received contract awards both times, despite the fact that the first time it was listed, the DSB was ranking firms in order of preference, and Colletti Brothers ranked second. This was also the only time during DeFalco's tenure as Commissioner that Desmond & Lord was recommended on any DSB list.*

In contradiction to DeFalco's testimony, other evidence before the Commission strongly indicates that design contract awards, during DeFalco's term as Commissioner, were not the result of random selection. As DeFalco recognized in his public testimony, he would require some reason to make a designer selection which differed from the firm ranked number one by the DSB.²²³ Yet, during the time the DSB ranked design firms, DeFalco frequently selected firms which were not ranked number one. Presumably, DeFalco had some reason to make those selections. Since DeFalco testified that he did not research the backgrounds of the recommended firms, and ordinarily knew nothing about the recommended firms,²²⁴ that other reason logically could only have come from some person or persons other than DeFalco, or from some reason or reasons other than the design firm's experience and qualifications.

DeFalco's initiative in having the DSB stop its practice of ranking firms can only be seen as a step to reduce his accountability by increasing his discretion. Opportunities were created for political factors to play an undetected role in the designer selection process. Patterns of favoritism, with respect to firms such as Masiello & Healy, the Coletti Brothers and Universal Engineering, attracted attention when the DSB ranked other firms above the selected ones. With an alphabetical listing, an award such as that of the Holyoke Community College contract to DMJM did not have the possibility of being noticed because of the firm's ranking.

The efforts by DeFalco to eliminate a ranking system seem inconsistent with random selection when viewed in the context of his design contract awards when the ranking system existed. The evidence with respect to Manzi's involvement in certain of these contract awards, particularly the Holyoke Community College contract, compels the conclusion that DeFalco did not use an "eenie meenie moe"²²⁵ system to award design contracts.

*Further details regarding these contract awards are presented by the chart on DeFalco contract awards, previously reproduced as A&F Appendix Exhibit #20.

IV. SARGENT ERA

A. INTRODUCTION

Francis W. Sargent's terms as Governor spanned six years (1969-1974) and five Commissioners of Administration and Finance: Donald Dwight (1/69-8/70), Charles Shepard (8/70-9/71), Robert Yasi (10/71-11/72), William Cowin (11/72-5/74), and David Marchand (5/74-12/74). Throughout that time the statutory process for awarding design contracts remained unchanged: the Designer Selection Board (DSB) submitted an alphabetical list of three or more design firms to the Commissioner of A & F, and the Commissioner awarded the design contract to one of these firms.*

Dwight is the only Commissioner from this time period who testified that he obtained from the DSB information regarding its preferred ranking of firms in addition to its letter alphabetically listing the names of the recommended firms.** However, Dwight testified that he did not necessarily base his decision on this information. The other Commissioners testified that they either selected design firms at random and/or that they make their decisions after conferences with the Deputy Secretary for Central Services, Albert Zabriskie and, on some occasions, his assistant Philip Dick.***

All the A & F Commissioners who followed Dwight in that position testified that they made their selections without receiving input or recommendations from others outside the Executive Office for Administration & Finance.

Yet, throughout its hearings and investigations, the Special Commission received substantial evidence to the contrary -- evidence that others in the Governor's political organization and in the administration successfully recommended designers for contract awards. Harold Greene (Sargent's State Service, or Patronage, Secretary) and Vic Zuchero (Executive Director of the Sargent Committee) testified to being consulted concerning recommendations for design contract awards.**** Albert Zabriskie, Deputy Commissioner for Central

* See 1966 Acts & Resolves, chapter 676.

** Dwight's term as Commissioner is treated in the MBM report, supra.

*** For the details and citations concerning the testimony of the A & F Commissioners during the Sargent era, see the subsection of this report entitled Commissioners, infra.

**** For the details and citations concerning the role of Greene and Zuchero, see the subsections of this report entitled Harold Greene and Victor Zuchero, infra.

Services for all five A&F Commissioners and Executive Secretary to the DSB, is the thread that extends throughout the years Sargent was Governor. Zabriskie testified that he met regularly with Donald Dwight during the time he was Lieutenant Governor to obtain his recommendations for design contract awards, and that he conveyed these recommendations in the form of check marks or dots on the original DSB recommendation letters to the four A&F Commissioners for whom he worked.*

In addition, a document from Harold Greene's files found in the state archives confirms that Donald Dwight, Vic Zuchero and Albert "Toots" Manzi were three people who were consulted in design contract awards, and whose preferences for design contract awards were followed.** Investigation of some of the firms identified in this document which were awarded design contracts - John Carr Associates, R. Scott Quinlan, Healy & Healy, Samuel Ussia, and Abraham Woolf Associates - revealed that these firms had contributed to the campaign, or had agreed to make future payments, and had contacted their "sponsor" seeking a favorable contract award decision.***

Other documents from Governor Sargent's files in the state archives indicate that Richard Thissen of Desmond & Lord met with Governor Sargent to discuss design contracts on two occasions prior to the award of the Bristol County Jail contract to that firm .**** Although Governor Sargent testified that he had no recollection of these meetings, he did not deny that such meetings took place.*****

While there is conflicting evidence on some of the details, the pattern presented by all the evidence is clearly one of regular political input into the selection process, whether in response to campaign contributions or other payments. The evidence of this pattern is persuasive, and is inconsistent with the testimony of each of the A&F Commissioners who succeeded Dwight.

* For the details and citations concerning the role of Zabriskie and Dwight, see the subsection of this report entitled Donald Dwight/Albert Zabriskie, infra.

** See subsection of this report entitled Harold Greene Memorandum, infra.

*** See subsection of this report entitled Architects, infra.

**** See subsection of this report entitled Architects; Desmond & Lord and Bristol County Jail Contract Award, infra.

***** See subsection of this report entitled Governor Sargent, infra.

B. SIGNIFICANT INDIVIDUALS

While the Commissioners of A&F under Governor Sargent changed frequently, a number of other individuals, concerning whom there is evidence of involvement in the design contract award process, remained constant during those years. Manzi remained Worcester County Co-ordinator and Sargent's most successful fundraiser.²²⁶ His fundraising activities during that time which were in violation of the state campaign finance laws are illustrated in the Laundering Improper Campaign Contributions section of this report through an analysis of one campaign dinner function organized by Manzi. Evidence of Manzi's role in design contract awards during the Volpe years has already been summarized in an earlier subsection of this report, Volpe Era. Examples of Manzi's involvement in designer selection during the Sargent years will appear in the later subsection of this report entitled Architects.

The other individuals implicated in design contract awards were brought into the administration or into campaign activities by Governor Sargent. Donald Dwight had first served with Sargent in 1963 on the board of the Department of Public Works and later served as Sargent's first Commissioner of A&F before being nominated, and then elected, Lieutenant Governor.²²⁷ Albert Zabriskie, who had worked with Sargent in the Department of Natural Resources, was designated by Sargent to be his Legislative Secretary in January, 1969, and was selected by Dwight in August, 1969 to become his Deputy Commissioner for Central Services.²²⁸

Harold Greene had also worked with Sargent in the Department of Natural Resources, and was appointed the Governor's State Service (or Patronage) Secretary in December, 1969, upon the recommendation of Robert Yasi.²²⁹ Yasi, who at various times served as Sargent's Chief Secretary, Campaign Co-ordinator, and Commissioner of A&F,²³⁰ also recommended his close friend Victor Zuchero to be Sargent's Appointment Secretary and, later, the Executive Director of the Sargent Committee.²³¹

Evidence concerning the activities of each of these men involving design contract awards is summarized below.

1. Donald Dwight/Albert Zabriskie

As Deputy Commissioner for Central Services, Zabriskie's responsibilities included all matters within A & F relating to the Bureau of Building Construction (BBC) and DSB.^{232*} When Dwight was Commissioner, he and Zabriskie had frequent and regular contact with each other.²³³ Both Dwight and Zabriskie have testified that during that time Zabriskie did not discuss design firms with Dwight or participate in Dwight's selection of firms for contract awards.^{234**235} Zabriskie testified that he did attend DSB meetings to become familiar with the process and to expedite projects.²³⁶ He stated that he did not report to Dwight what transpired at those meetings.^{237***238}

Zabriskie further testified that in January, 1971, shortly after Dwight began to serve as Lieutenant Governor, he met with Dwight at his request in the Lieutenant Governor's office on the second floor of the State House. Only Dwight and Zabriskie were present in the room. Dwight told Zabriskie that he wanted to have input into the selection of designers for contract awards. He asked Zabriskie to bring the original DSB letters to him as soon as Zabriskie received them. Zabriskie agreed to do this.²³⁹

Shortly after this meeting Zabriskie met with Shepard alone in his office. Zabriskie told Shepard of Dwight's request that he have input through recommending firms for contract awards.²⁴⁰ When the next group of finalist letters came from the DSB Zabriskie took them to Dwight in the Lieutenant Governor's office. Dwight sat back in his chair, reviewed the DSB letters, and

* A chart outlining Zabriskie's responsibilities as Deputy Commissioner is reproduced as A&F Appendix Exhibit #34A.

** Dwight did testify concerning his general practices in awarding design contracts while Commissioner. He testified that in addition to receiving the DSB letters listing three finalists, he received the DSB's ranked rating of the firms. According to his testimony, however, he did not necessarily base his decision on this information. He described as his criteria for selection a firm's geographical proximity to the job and its amount of past and present work with the state. He made no attempt to investigate the qualifications of the firms, assuming that all were qualified. He had no recollection of discussing the merits of the firms recommended by the DSB with any A&F staff. He did testify that if it had been brought to his attention that one of the firms had contributed to the Sargent Campaign, the fact might have influenced his decision. He stated that he discussed firms being considered for contract awards with fundraiser Albert Manzi and that Manzi occasionally made recommendations.²³⁵ For discussion of a major contract award made by Dwight while Commissioner, see the MBM report, supra.

*** Zabriskie's continuing role in the designer selection process is evident by his attendance at twenty-six out of twenty-seven DSB meetings from 3/24/71 - 12/18/74. The DSB minutes document his attendance during this later period. A chart summarizing this information is reproduced as A&F Appendix Exhibit #34B. Although the minutes do not show Zabriskie's presence until 3/24/71, this does not rule out the earlier informal attendance concerning which Zabriskie testified. Zabriskie also served as the DSB's Executive Secretary from 2/9/72 - 1/1/75.²³⁸

made certain selections. During this meeting Dwight did not ask Zabriskie any questions about the firms listed and Zabriskie did not volunteer any information.²⁴¹

After Dwight had reviewed the letters and expressed his recommendations by making either check marks or dots next to the name of the firms,²⁴² Zabriskie brought the letters back to Commissioner Shepard. He told Shepard that the marks on the letters represented Dwight's recommended selections.²⁴³

Zabriskie examined the DSB letters for those designers designated by Shepard for contract awards on April 16, 1971 and August 4, 1971. He identified them as being the letters he brought to Dwight and further identified the check marks on them as appearing to be the marks which Dwight made.^{244*}

The DSB letters from Shepard's term as A&F Commissioner were also examined at the Special Commission's request by Elizabeth McCarthy, a professional document analyst who has testified frequently as an accredited expert in courts of law.²⁴⁵ She publicly testified before the Commission that she concluded from her examination of the twenty-seven DSB letters initialed by Shepard (to indicate his selection) that twenty-six of them contained check marks next to the selected designer.^{246**} This would suggest that all but one of Dwight's recommendations were followed by Shepard. Dwight agreed with Zabriskie's testimony that he had input into the award of design contracts when he was Lt. Governor. His testimony differed from Zabriskie's only in the frequency and mechanics of his input. Dwight recalled having the greatest involvement during the term of Commissioner Shepard who, he testified, consulted him directly, rather than via Zabriskie. Dwight never testified that Zabriskie was the one to whom he conveyed his recommendations, but did admit that he made recommendations during the term of all four Commissioners.²⁴⁷

Zabriskie testified that he continued his practice of bringing the original DSB letters to Dwight under the next three Commissioners, and that Dwight continued to make recommendations by placing dots or check marks next to the names of individual designers.²⁴⁸ When Robert Yasi became Commissioner,²⁴⁹ succeeding Charles Shepard, Zabriskie told Yasi of the system then in effect whereby he met with Dwight on designer selections. Zabriskie testified that Yasi "resented the fact that this was to be the procedure," but did not direct Zabriskie to stop meeting with Dwight.²⁵⁰

After meeting with Dwight in the Lieutenant Governor's office and getting

* The DSB letters from 11/4/70 to 8/4/71 contain checkmarks. Thereafter only dots appear.

** A chart summarizing McCarthy's findings with respect to Shepard's selections is reproduced as A&F Appendix Exhibit #35.

Dwight's input, conveyed by check marks and dots, Zabriskie then met with Yasi. Zabriskie told Yasi that the markings on the DSB letters were placed there by Dwight. Yasi would usually also request that Philip Dick, an engineer assigned to A&F, be present at these meetings. Dick gave Yasi background information on the firms contained on the DSB lists. At these meetings Yasi asked Zabriskie and Dick whether they had any recommendations.²⁵¹

Zabriskie stated that the selection was the Commissioner's to make, so he neither directed the Commissioner to a particular dot or to any firm on the list.²⁵² Zabriskie identified the original DSB letters which were the subject of Yasi's May 12, 1972 letter transmitting notice of his selection to the Executive Office of Transportation and Construction as containing dots of the type made by Dwight.²⁵³ Elizabeth McCarthy, the document analyst, publicly testified before the Commission that forty-one of the forty-six selections made by Yasi had dots next to the selected designer.* McCarthy also concluded through her examination that in some cases the dots are beneath the ink of the pen initials made by Yasi (on the DSB letter next to the name of the selected firm to indicate his decision). In no case did she find either a pencil or ink mark over the Yasi initials.²⁵⁴

William Cowin succeeded Yasi as Commissioner of A&F.²⁵⁵ Zabriskie remained as Deputy Commissioner for Central Services and continued to consult with Dwight concerning design contract awards.²⁵⁶ Zabriskie testified that he told Cowin shortly after he became Commissioner that he was meeting with Dwight concerning designer selections, and that Dwight placed marks on the DSB letters to indicate his preference. Cowin did not appear surprised at this, and did not tell Zabriskie to stop consulting Dwight. Zabriskie therefore took the DSB letters to Dwight for his review and markings, and then brought them to Cowin's office. Cowin made his selections outside Zabriskie's presence; Zabriskie learned of Cowin's decisions when he received a copy of the transmittal letter sent by Cowin to the Secretary of Transportation and Construction.²⁵⁷

Zabriskie identified the dots appearing on the original DSB letters attached to the Commissioner's November 29, 1972 transmittal letters to the Secretary of Transportation & Construction as the type of marks which Dwight made.²⁵⁸ Elizabeth McCarthy found, from her analysis of the original DSB recommendation letters initialed by Cowin, that twenty-nine of the thirty letters had dots

* A chart summarizing McCarthy's findings with respect to Yasi's selections is reproduced as A&F Appendix Exhibit #36.

next to the selected firms.* With respect to the three DSB letters attached to the February 19, 1974 transmittal letter to the Secretary of Transportation & Construction, she also found that the dots were made with different ink than Cowin's initials designating his selections. Moreover, the dot marks themselves were consistent, i.e., all the same type, the same condition, the same color of ink and in the same position. To the extent that pencil dots were made on any of the original DSB letters initialed by Cowin, these dots are beneath the ink of Cowin's writing.²⁵⁹

David Marchand followed Cowin as Commissioner of A&F.²⁶⁰ Marchand had previously worked for Lt. Governor Dwight as his Chief Secretary and Counsel.²⁶¹

Zabriskie testified that he told Marchand shortly after he became Commissioner of his practice of meeting with Dwight and bringing the DSB letters to these meetings. Zabriskie indicated to Marchand that Dwight made marks on these original letters to denote his recommendations. When Marchand made no response to this information, Zabriskie continued to meet with Dwight. After the meetings he delivered the DSB letters to Marchand, who made his selection without any discussion with Zabriskie and outside Zabriskie's presence.²⁶²

Zabriskie was shown the original DSB letters which were attachments to the letter listing selected designers, dated December 27, 1974, and sent by Marchand to the Secretary of Transportation & Construction. Many of these attachments contained dots next to more than one designer recommended by the DSB for a particular contract award. Zabriskie identified all these dots as the type of marks Dwight made.²⁶³ Document expert Elizabeth McCarthy concluded from her analysis that twenty-one of the twenty-four selections made by Marchand had dots next to the chosen designer.** None of these marks were made over Marchand's initials. McCarthy also found one instance in which Marchand's initials were forged, and three other instances of possible forgery.²⁶⁴ These will be discussed during later subsections of this report.

According to Elizabeth McCarthy's analysis, of the 127 contracts awarded by A&F Commissioner Shepard through Marchand, there are discernible marks (dots or checks) on the DSB letters next to the names of 117 designers. Zabriskie testified that he brought these original DSB letters to Dwight as a regular practice, but not that he did this on every occasion. While it is evident from Zabriskie's testimony that Dwight made a substantial number of

* A chart summarizing McCarthy's findings with respect to Cowin's selections is reproduced as A&F Appendix Exhibit #37.

** A chart summarizing McCarthy's findings with respect to Marchand's selections is reproduced as A&F Appendix Exhibit #38.

marks, there is an open question as to how many of the 117 dots and check marks were made by Dwight.

In his public testimony before the Commission, Philip Dick stated that Zabriskie ultimately received, and had custody of, the original DSB letters sent to the Commissioners of A&F. Dick observed that there were dots next to designers' names on many of these DSB letters before they were brought to each of the A&F Commissioners. He also saw dots on the letters when Zabriskie first showed them to him, and approximately 30% of the time he saw Zabriskie himself make pencil dots on the DSB letters. Dick further testified that Zabriskie was friendly with Dwight and Zabriskie told him (Dick) on a few occasions during the designer selection process that he had consulted with Dwight concerning his recommendations for design contract awards.²⁶⁵

There are occasions in which dots appear next to more than one firm listed on the DSB recommendation letter. Whether these additional marks were made by Dwight, or by someone else is uncertain.²²⁶

2. Harold Greene

Harold Greene served as Sargent's State Service Secretary from December, 1969 through March, 1973. His duties were to find and recommend to the Governor appointments to approximately 1500 positions in state government. During his public testimony before the Commission in June 24, 1980, Greene admitted that this translated into patronage. He reported directly to the Governor.²⁶⁷

Greene said that Yasi, then Sargent's Chief Secretary, recruited him and explained to him what his duties were as State Service Secretary.²⁶⁸ Although stating that he was acting on his own initiative, Greene testified that he understood that his patronage duties included the award of design contracts:

Q. Now, sir, as Assistant to the Governor, did your duties and responsibilities include matters relating to design contracts?

A. Yes.

Q. And, sir, can you tell us in general terms what your duties and responsibilities were specifically as they related to design contracts.

A. These duties and responsibilities were my own duties, my own responsibilities. I thought as part of my job in helping the Governor that I should take advantage of whatever areas of what you call patronage to assist friends of the Governor.²⁶⁹

Greene's appearance before the Commission on June 24, 1980 was after Albert Zabriskie's public testimony and after having been found by the court to be in civil contempt, and being confined to jail, for prior refusals to respond to the Commission's questions.²⁷⁰ Greene publicly testified at that time that only ten to fifteen DSB letters (out of the 127 initialed by Commissioners Shepard through Marchand) were brought to his attention by Zabriskie for his recommendation. Greene further testified that these letters were first brought to him beginning in mid - 1970, within months after he became State Service Secretary. According to Greene, his meetings with Zabriskie occurred over a two year period, although at "very infrequent intervals." Greene indicated his recommendations by placing a dot or check mark next to a particular firm.²⁷¹

From Greene's testimony it would appear that Zabriskie first brought the DSB letters to Greene at the end of Dwight's service as Commissioner of A&F. However, no dots or check marks appear on any of the Dwight selection letters. Since Greene could not say whether the DSB letters brought to him by Zabriskie were copies or originals,²⁷² it may be that Greene was shown copies of the DSB letters, on which he made a mark to indicate his recommendation.

The interpretation that any marks Greene may have made were made on copies of the DSB letters, and not on the originals, is consistent with Greene's testimony that there was no pattern to the type of marks he made:

Q. Sir, in terms of whether the marks were dots or checkmarks, was there any particular pattern or time sequence with respect to when?

A. Depended on whether I felt like making a checkmark or a dot.

Q. On one day you might make a dot and some other day you might make a checkmark?

A. That is correct.²⁷³

By contrast, the original DSB letters reveal a clear pattern: the marks made during Commissioner Shepard's term are all check marks; the marks made during the terms of the other Commissioner's are all dots.²⁷⁴

Furthermore, the testimony of various Commissioners,²⁷⁵ the testimony of Zabriskie,²⁷⁶ and the documents themselves indicate that the DSB sent its recommendation letters to the A&F Commissioners in batches. Yet Greene testified that Zabriskie brought each letter to him singly, not in groups.²⁷⁷

The discrepancies between Greene's testimony and what the original DSB letters show raise questions about the truth of Greene's testimony. In any event, these discrepancies strongly suggest that any documents Zabriskie may have brought to Greene were probably not the original DSB selection letters.

Harold Greene publicly testified on June 24, 1980 and June 27, 1980 that when he received the DSB letters from Zabriskie, he already knew which firms or individuals were friendly to the Governor because certain names had been brought to his

attention by Victor Zuchero and by Albert Manzi, and because he had lists of contributors, advisors and campaign workers in his own patronage office. Greene testified that he saw Manzi to discuss appointments and design contract awards at least once a month, and as frequently as once a week, both at functions in Worcester and at Greene's office. Greene said that he solicited Manzi and Zuchero for names of designers they recommended and that Manzi and Zuchero also contacted him on their own initiative to give him the names of designers for contract awards. Greene could only recollect one specific occasion on which Manzi contacted him, but stated that he recalled none of the details. Greene identified Joseph Intingaro, John Guarino, and Samuel Ussia as the names of architects on whose behalf someone contacted him.* Greene could not recall who communicated with him about these firms.²⁷⁸

Albert Manzi refused to answer questions before the Commission.²⁷⁹ Victor Zuchero, however, during his public hearing before the Commission on May 7, 1980, testified to many contacts with Greene (and later with Robert Dumont, Greene's successor) on design contract matters, and identified several designers on whose behalf he spoke to Greene, including Joseph Intingaro, John Guarino, Phineas Alpers and Samuel Ussia.** Zuchero also testified that he regularly received copies of the DSB finalist lists from Greene.²⁸⁰ Greene, however, denied sending copies of the DSB finalist lists to anyone.²⁸¹

Greene was shown a copy of the DSB minutes for its July 26, 1972 meeting.*** This document was found in Greene's office files which were in the Commonwealth's storage at the time of retrieval. The minutes contain handwritten notes such as "DD," "Vic," and "Toots," next to the names of certain design firms. Harold Greene identified the "File Hg" written in the upper right hand corner of the first page of the document as appearing to be his handwriting.²⁸² He further identified the following as being in his handwriting: the blue ink entry "Toots" next to the design firm E.J. Flynn Associates,²⁸³ the pencil entry "Health Center 2,000,000 1st part of Plymouth County Courthouse" next to New Oceanographic Lab. Bldg., Southeastern Mass. Univ.,²⁸⁴ the blue ink entry "Out" next to the design firm Pierce & Pierce,²⁸⁵ the blue ink entry "has lot of

* For further discussion of these and other architects, see subsection of this report entitled Architects, infra.

** Ibid

*** The 7/26/72 minutes will be reproduced later in the text of this report in a subsection entitled Architects; Harold Greene Memorandum.

work" next to the design firm Caolo & Bieniek Associates, the blue ink entry "lot of work" next to the design firm Reinhardt Associates²⁸⁶ and the black ink (felt pen) entry "DD to check" next to the design firm Francis Associates.²⁸⁷

Other than noting that Zabriskie provided the information which was the basis for the two "lot of work" entries and the one "Health Center...Plymouth County Courthouse" entry,²⁸⁸ Greene testified that he recalled nothing concerning the other entries in his handwriting or how these entries came to be made.²⁸⁹ With respect to the other entries on this document which were not in his handwriting, Greene said he could not identify the handwriting and had no knowledge of the significance or purpose of the entries.²⁹⁰

From the fact that the various entries on this document were in pencil, in different color inks and types of pen, and in different handwriting, it appears that these minutes were circulated to a number of people. Moreover, these minutes appear to reflect a slice of life preserved by chance over the years in the boxed files of the State Service Secretary. The significance of these entries, and what they reveal with respect to political and other input into designer selection, is discussed at length in a later subsection of this report entitled Architects.

It would also appear that Greene had an impact on the designer selection process through the recommendations he made to the Governor for the appointment and re-appointment of members of the Designer Selection Board. Greene testified that he consulted with others to determine whom he should recommend to the Governor for appointment to the DSB. Greene would then make recommendations to the Governor. On other than DSB appointments he remembered consulting with campaign fundraisers such as Manzi. He did not specifically recall whether he consulted with Manzi concerning DSB appointments, but stated that he doubted that he did so.²⁹¹

The Special Commission found in a folder labelled "Designer Selection Board" contained in boxed files from Harold Greene's office a single page document dated December 26, 1972 which was the xerox of a list of five candidates for two expired Designer Selection Board terms and also bore an original handwritten note dated January 3, 1972. This document is reproduced on the following page:

A/Z

12/26/72

Preliminary thoughts on 5
Arch. candidates for 2 expired
terms in Designer Selection Ed's.

Priority

- 1 - Richard Lamoureux - Worcester
Age 34
- 2 or 3 - Donald Boyce - Holden
Age 56
- 3 or 2 - B.G. Wardlaw - Longmeadow
Age 41
4. - Willis Mills - Chatham
Age 64+
5. Herbert L. Bogen - Lexington
Age 44+

AAD

1/3/72 & IVAGU
TOO YOUNG
WILL GET BACK
TO ME ABOUT
BROWN & SULLIVAN

The xeroxed list of five candidates was prepared by Philip A. Dick (PAD). He testified that he had obtained the names of these candidates from the Massachusetts Association of Architects, and had ranked them in order of priority after reviewing their resumes and interviewing at least three of them.²⁹² He then sent the above note to Albert Zabriskie (A/Z).

Greene agreed that the "Toots" entry referred to "Toots" Manzi. Although he did know of other Nagles, he identified a David Nagle as Governor Sargent's Appointments Secretary.²⁹³

Peter Brown and James Sullivan had previously been appointed for two year terms expiring on December 5, 1972*. One may infer that since Brown's and Sullivan's first term expired in December, 1972 and they were up for reappointment in December 1972 or January 1973, that the "January 3, 1972" entry really means "January 3, 1973." This inference is strengthened by the fact that the xerox portion of the document from PAD (Philip A. Dick) to A/Z (Albert Zabriskie) is dated December 26, 1972. An original note written in January on a xerox dated December 1972 could therefore only have been written in January 1973.

Greene, in his testimony before the Special Commission, denied knowledge of the handwritten note and its contents. He stated that it was not his handwriting and that he did not know whose it was. Greene said he did not remember recommending Brown or Sullivan for appointment to the DSB.²⁹⁴

Both Brown and Sullivan were in fact reappointed to the DSB for terms expiring in December, 1972, and none of the individuals recommended by the Massachusetts Association of Architects, and evaluated and ranked by Philip Dick, were appointed.**

Greene, although not active in fundraising, was visible at campaign functions, was kept apprised of firms that were receiving design contracts, and kept Governor Sargent informed about which people the administration was helping. Greene testified that he attended a number of fundraising functions with the Governor "to answer any questions and try to help with any questions that people there might have concerning problems with the state government."²⁹⁵ Once contract awards were made by the Commissioners of A&F, Zabriskie informed Greene of those selections so that he might note those awards in his records.²⁹⁶ As State Service Secretary, Greene reported directly to Governor Sargent, and met with him weekly.²⁹⁷ Greene testified that the information he reported to the Governor included the names of those he had helped

* Extracts from the DSB Annual Reports concerning the members of the DSB are reproduced as A&F Appendix Exhibit #39.

** Ibid.

as Patronage Secretary:

Mr. Ward: My question was did you have occasion to remind the governor from your knowledge who were his friends?

The Witness: Many times.

Q. Did you discuss with the governor which individuals that you in your capacity as patronage secretary were assisting through the exercise of your duties and responsibilities?

A. I thought I already answered that question.

Q. What was the answer?

A. Yes.²⁹⁸

3. Victor Zuchero

Vic Zuchero first became Executive Director of the Sargent/Dwight Committee in July, 1970. He had previously served as Governor Sargent's Appointment Secretary.²⁹⁹ Zuchero testified concerning the system in effect during his tenure as Executive Director whereby he communicated regularly with Harold Greene concerning designer contract awards, sending recommendations to Greene which were based upon whether an architect or engineer was a financial supporter of the Governor.

It was standard procedure during those years for Harold Greene to transmit to Zuchero lists of the three designers recommended for contract awards by the Designer Selection Board.³⁰⁰ Zuchero did two things with these lists. He checked the names against his campaign contribution records and, if a contribution appeared in the DSB lists, contacted Greene to tell him that the firm or individual was "supportive" of the Governor.³⁰¹ Zuchero also solicited campaign contributions from those on the DSB lists, whether awarded a contract or not.³⁰²

Campaign contributors also contacted Zuchero asking him "to put in a good word" on their behalf for a state design contract. On these occasions Zuchero met Greene at his office or called him. He gave Greene the contributor's name, and asked Greene to do what he could for the design firm.³⁰³ Zuchero estimated that he had approximately six face-to-face meetings with Greene to discuss design contract awards.³⁰⁴ Zuchero identified Joseph Intingaro, John Guarino, Samuel Ussia, and Phineas Alpers as designers on whose behalf he spoke to Greene.³⁰⁵

4. Governor Sargent

Governor Sargent was interviewed by Special Commission staff on two occasions, and testified at a private hearing before the Special Commission. The questions at these sessions focused on the award of design contracts during his administration, and on the campaign fund-raising activities of Manzi and Zuchero.

Evidence before the Special Commission indicates that Sargent dealt regularly with Greene, Manzi, Zuchero, and Dwight. Greene's testimony about his regular dealings with the Governor, including attendance at fund raising functions and reports to him on whom he was helping, has already been summarized above. John Flannery, Sargent's Chief Secretary from 1971 through 1974, in an interview by Special Commission staff, identified Manzi, Zuchero and Dwight as people who could see the Governor without an appointment by slipping in between scheduled appointments.³⁰⁶ Jane Clifford Fowler, Sargent's Appointment Secretary in 1973 and 1974, confirmed in an interview by Special Commission staff that Manzi saw the Governor without scheduling an appointment through her office.³⁰⁷ Zuchero publicly testified to a similar arrangement when he was Appointment Secretary in 1969 - 1970.³⁰⁸ Robert Yasi, Sargent's Chief Secretary through 1971, in his public testimony before the Commission described the Governor's relationship with Manzi as close:

Q. And from your observations what was Mr. Manzi's relationship with the governor in the governor's office?

A. I think I'd characterize it, I would say close. The governor considered him the king of Worcester. He was the Worcester coordinator and fundraiser.³⁰⁹

Manzi was a familiar figure at the State House. Harold Greene testified that he saw Manzi sitting waiting at the Governor's Office, and knew that he met with the Governor many times. Jane Clifford Fowler said in an interview that she saw Manzi in the State House frequently, once or twice a week.³¹¹ Stephen Teichner, a Special Assistant to the Governor from 1970 to 1974, also saw Manzi frequently in the Governor's Office.³¹²

Sargent testified privately before the Commission on December 10, 1980 that during 1973 and 1974 he communicated frequently with Victor Zuchero about the financial condition of the campaign.³¹³ Jane Clifford Fowler said that she regularly blocked out an hour of the Governor's time, probably on Thursday afternoon, for him to meet with Zuchero at the Sargent Committee headquarters.³¹⁴

Concerning Dwight's access to Sargent, Flannery during an interview with the Special Commission stated that the Lt. Governor could not only see the Governor without scheduling an appointment, but also was one of the four or five people with an intra-office telephone directly connected to the Governor's Office.^{315*316}

* Sargent stated during his private testimony that he recalled Dwight having this intra-office telephone line when he was Commissioner of A&F, but did not remember it continuing when Dwight was Lt. Governor.³¹⁶

Sargent testified that he gave Lt. Governor Dwight, with whom he had previously worked at the Department of Public Works, special assignments including the selection of a cabinet under the state reorganization act and acting as a liaison to the business community.³¹⁷

Although he had been in regular contact with Greene and Zuchero, Sargent testified that he had no knowledge of the involvement in design contract awards to which both Zuchero and Greene admitted. Although also in regular contact with Manzi and Dwight, Sargent testified that he had no knowledge of their fundraising activities as being related to any design contract award activities by them.³¹⁸ Yet much evidence concerning Manzi's and Dwight's, as well as Zuchero's and Greene's, role in the award of design contracts has been adduced at Special Commission hearings. Sargent, however, recalled no discussions during his administration concerning the question of whether political considerations should enter into the award of design contracts.³¹⁹

Sargent testified that he was familiar with Harold Greene's role in making recommendations with respect to appointments to government positions, but that he was not aware that Greene also had some involvement with design contract awards.³²⁰ Sargent said that he would expect that Greene recommended people for appointment to the DSB, and that he followed Greene's recommendations unless there was some reason not to. As a matter of practice he would also expect that Greene would consult with Manzi with respect to the appointment to the DSB of someone from Worcester County.³²¹

While Sargent recalled conversations with Zuchero concerning requests by contributors who were seeking appointments to government positions, he did not remember such conversations in relation to design contracts.³²²

Sargent identified Manzi as one of his most successful fund raisers.³²³ Sargent said that he would expect that people on his staff would run names by Manzi before making appointments to government positions, but that he had no direct knowledge that Manzi was consulted on other matters.³²⁴ Sargent under questioning stated that he was only familiar with certain of Manzi's fundraising activities:

- A. Was I familiar with them. Let me describe what I was familiar with. He would say that he thought that in the fall there should be a fundraiser, that it should be at Pleasant Valley, what he thought the amount could be that could be raised by such a fundraiser, and I would say that sounds fine, why don't you talk with Vic about the date and so on, and I would never really know anything particular beyond that, other than finally going to the function, invariably it was crowded, invariably there were people who were ushered through, they were waded through, you really don't know nine tenths of who they were, and I never got

any closer to the fundraising activities than that. But, I remember that Vic Zuchero also told me that the records that would come from Manzi following these functions were complete and accurate, names and numbers, and checks and the whole thing was very complete. And I remember saying, and I remember John saying the same thing, if you had coordinators of the ability of Manzi in every district you would be in very good shape. In other words, that's all I knew of fundraising activities. I have read all kinds of allegations of other things, whether they are true or not, I don't know.³²⁵

Sargent testified that he did not know that Manzi was raising money from design firms, that Manzi obtained cash contributions which were never reported but were used in the campaign, that Manzi raised money from corporations for campaign purposes, or that Manzi attributed contributions to individuals who had never made them.^{326*}

Sargent also testified that he did not recall discussing the award of design contracts with Donald Dwight at any time, nor was he aware that Dwight as Lt. Governor had a role with respect to design contract awards.³²⁷ Nevertheless, Sargent told the Commission that he had no reason to doubt Zabriskie's testimony that he regularly consulted with Lt. Governor Dwight to obtain his recommendations for design contract awards.³²⁸

The Special Commission further questioned Governor Sargent about his knowledge of the legal process for awarding design contracts and his communications with the A&F Commissioners. Sargent in his private testimony stated that while Governor he was not aware of the statutory system for awarding design contracts which assigned legal responsibilities to the DSB and the A&F Commissioners.³²⁹ He did not recall any conversations that he had with any of his A&F Commissioners concerning any particular design contracts.³³⁰

The Special Commission also asked Governor Sargent whether he had had any contact with architects seeking state design contracts. Sargent could not recall having any communication with any architect about state work.³³¹ Sargent testified that if an architect complained to him directly about not getting enough state contracts, it would be his practice to ask someone from his staff who was present in the room, such as his Chief Secretary, to look into the complaint.³³²

Although Sargent did not recall anything concerning the interaction of political figures with architects seeking state design contracts, nor anything concerning the interrelationship between architects making political

* These allegations are discussed in the subsection of this report entitled Architects; Harold Greene Memorandum, infra, and Volpe Era, supra, as well as other separate reports such as Laundering Improper Campaign Contributions.

contributions and receiving design contracts, other witnesses, including certain political figures and the architects themselves, testified to the interaction of political figures with architects and the interrelationship between making political contributions and receiving design contracts. Much of this testimony will be summarized in the following section.

C. ARCHITECTS

The Special Commission's investigation of design contract awards during the Sargent administration focused, in part, on the design firms who received these contracts. Most of the leads which caused the Special Commission to focus on particular contracts or particular firms originated from documents found in the state archives or at the state records storage center in Grafton. These documents included the copy of the July 26, 1972 DSB minutes from the files of Harold Greene containing handwritten notations next to the name of design firms, which notations appear to refer to Manzi, Zuchero and Dwight. The Special Commission also obtained correspondence from an architect unable to get state work who had been told by Dwight that something other than merit was needed to be selected for a state design contract, and documents indicating that one architect successful in getting state work had access to the Governor through the person in charge of the Governor's campaign finances.

What follows is a summary of individual case studies of architects who were successful in getting state contracts, and of one who was not. The aggregate picture of the system for awarding state design contracts which emerges from these individual examples is one where favoritism, for political and other reasons, predominated.

1. Gourley Correspondence

Ronald Gourley is an architect who is now Dean of the College of Architecture at the University of Arizona. Previously, he had worked as an architect in Massachusetts. He was individual practitioner from 1951-1956, a partner in Sert, Jackson & Gourley from 1958-1964, and later a partner in Integrated Design Services (1966-1972), Gourley & Richmond (1972-1976), and Gourley, Richmond and Mitchell (1976-present). From 1965 to 1970 Gourley was a professor at the Harvard University Graduate School of Design.³³³

The Special Commission interviewed Ronald Gourley on August 13, 1980. By his own calculation, Gourley's firm made it to the DSB list of three finalists thirteen times during the period March 1967 to November 1970 but never obtained state work. (A chart prepared by Gourley which portrays his lack of contract awards from December 1966 through October 1970 is reproduced as A&F Appendix Exhibit #40). The final contract award was made by A&F Commissioner DeFalco seven times and by A&F Commissioner Dwight six times.³³⁴

Sometime prior to or between January 1969 and September 1971 Ronald Gourley expressed his concern over this lack of success to Representative Mary Newman, later Secretary of Manpower Affairs for the Sargent administration. Newman subsequently spoke to both Dwight and Shepard (presumably at different times, during each of their terms as Commissioner) about Gourley's desire for state work.* Gourley did not obtain any state contracts during Dwight or Shepard's terms. He made no political contributions during this period.³³⁵

On February 9, 1971, Gourley attended a reception for Mary Newman at the Cambridge Boat House.** Donald Dwight, by then Lt. Governor, was present at the affair. Gourley told the Special Commission during an interview that he had a brief conversation with Dwight at the reception. Gourley asked Dwight why his firm had not been awarded design contracts after being on the DSB finalist list thirteen times between 1967 and 1970. Dwight told him that there was more to

* Neither the Special Commission's interview of Gourley nor the documents he provided indicate the specific date of Gourley's discussion with Newman. One can infer from the 1/19/72 letter from Mary Newman to Robert Yasi in which Newman mentions speaking to Dwight and Shepard in the past about Gourley that Gourley initially approached Newman no later than Dwight's term as A&F Commissioner. (The 1/9/72 letter and other Gourley correspondence is reproduced as A&F Appendix Exhibit #41.)

** The date of the reception is obtained from a 2/10/71 letter Gourley wrote to Dwight. This letter and other Gourley correspondence is reproduced as A&F Appendix Exhibit #41.

obtaining a contract than merely being on the list. Gourley inferred that Dwight meant political contributions were necessary, although such was not directly or specifically stated.³³⁶ Gourley summarized this meeting in a letter which he wrote to Mary Newman, dated January 12, 1972:

You kindly introduced me to Donald Dwight at your reception at the Cambridge Boat House one evening and he admitted that final selections are made on the basis of considerations other than merit alone.*

The day after the reception Gourley wrote a letter to Lt. Governor Dwight, again expressing his concern that although his firm frequently achieved finalist status on the DSB list, it had never received a state contract.** Gourley was aware and expressed the awareness in the letter that Dwight was no longer Commissioner. Despite this awareness of Dwight's change of position, Gourley expressed the hope, in this letter, that the firm would not continue to be overlooked. Gourley did not receive a reply to this letter. However, someone solicited Gourley and his partner in the early 1970's for a contribution to the Sargent campaign, but they declined to make a contribution.³³⁷

At some time between February 1971 and January 1972 Gourley discussed his lack of success in obtaining state contracts with Earle Littleton, the Chairman of the DSB. Littleton asked Gourley whether he had a friend at the State House. When Gourley mentioned Mary Newman, Littleton advised Gourley to work through Newman***Gourley therefore again contacted Newman, writing her a letter on January 12, 1972. He asked her for assistance in obtaining state contracts. He made this request after referring to Dwight's remark, already quoted, that designer selections were based on considerations other than merit and Littleton's agreement with Dwight's statement:

Earl Littleton, the Chairman of the Designer Selection Board, concurred with this in a more recent conversation. He frankly inquired whether I had a friend at the State House and when I mentioned you made it clear that I should work through you if possible because I could not have stronger support.

Applications for the current work were due yesterday and I submitted for the four projects described on the enclosed DSB list #72-2 extracts. Because these are very depressed times in my profession the competition for these jobs will be severe--no holds barred--and immediate contact and follow-up are both required to keep my name in the forefront with the powers.

* This letter is reproduced in full as part of A&F Appendix Exhibit #41.

** This letter is reproduced as part of A&F Appendix Exhibit #41.

*** This information is obtained from Gourley's 1/12/72 letter to Newman, reproduced as part of A&F Appendix Exhibit #41.

I well understand that I ask a difficult thing but, unfortunately, it appears to be the only way. So, if you feel able to support my cause by helping in any way, I would be most grateful. I am in dire need of the work and confident that I can do a noteworthy building for the Commonwealth.

Newman then wrote Commissioner Yasi on January 19, 1972, indicating that Gourley and his wife had been "helpful to Republicans" in the state.* Newman asked Yasi to "take an extra look at this one" and indicated that she would be "most grateful for any consideration" Yasi would give Gourley. Gourley did not receive any state design contracts** during Yasi's term. He made no political contributions.³³⁸

2. Harold Greene Memorandum

Special Commission investigators found a copy of minutes of the July 26, 1972 DSB meeting in files in storage by the Commonwealth which were labelled "Harold Greene." Although stating that he was not familiar with this document or with how it came to be in his files, Greene did identify some of the handwriting on the document as his own, particularly the entry "file Hg" which appears on the first page of the document.³³⁹ What makes this document of interest is the fact that it contains a number of entries made by different writing instruments, and in different handwriting, all of which relate to the contracts or architects listed in the minutes as being recommended for design contract awards by the DSB to the Commissioner of A&F. The next six pages of this report are a reproduction of this document:

* This letter is reproduced as part of A&F Appendix Exhibit #41.

** Gourley during his interview stated that after his conversation with Dwight in Feb. 1971, his firm applied for less state work and never again appeared on the DSB list. He implied that his firm's less frequent application occurred soon after Feb. 1971. However, the change seems to have occurred during Yasi's term or later rather than soon after February 1971 when Shepard was Commissioner. This conclusion is derived from the January 1972 correspondence between Gourley, Newman, and Yasi concerning Gourley's interest in state work and the 1/11/72 letter from Gourley to Littleton indicating Gourley's application for further projects in 1972 and appearance on recent DSB lists.

DESIGNER SELECTION BOARD

File
Hg

MINUTES OF THE 98TH REGULAR MEETING, WEDNESDAY, JULY 26, 1972, ROOM 2110
LEVERETT SALTONSTALL BUILDING, 100 CAMBRIDGE STREET, BOSTON, MASSACHUSETTS

1. ROLL CALL:

The meeting was called to order at 1:00 p.m. and the following members were present:

Julius Abrams
Earle F. Littleton
Andrew C. Paton
Walter J. Poitras
James J. Sullivan

Also in attendance were Albert Zabriskie, Executive Secretary; Philip Dick, Administration & Finance; Frederick J. Kussman, BBC Coordinator DSB; Joseph Pyne, Board of Regional Community Colleges; James Kerr, Voting Representative of Department of Mental Health; Frank Smith, Voting Representative of Department of Correction; Roland St. Germaine; Voting Representative of Registry of Motor Vehicles; Ernest Sullivan, Voting Representative of Department of Public Health; Edward Rossi, Voting Representative of Division of State Colleges; Ken Rogers, Voting Representative of Lowell Tech. Institute; Louis Roberts, Voting Representative of Southeastern Mass. University; Robert Cataldo, Voting Representative of Board of Regional Community Colleges; and William Fitzpatrick, Voting Representative of Division of Youth Services.

2. MINUTES:

The minutes of the 97th regular meeting were approved as submitted.

3. CORRESPONDENCE:

Noted for the record was Secretary Yasi's letters of May 12 and 25, 1972 regarding the appointment of designers for the following projects:

✓ Nils Jonsson & Assoc.	E72-6	Bridgewater State College
Greenleaf Engineers	E72-8R	Boston State College
✓ McGonigle Engineering	G72-4R	State House
✓ McGonigle Engineering	G72-5R	State House
Francis J. Butler	H72-5R	Lakeville Hospital
Borek Assoc. Inc.	SM72-2	Southeastern Mass. University
Anderson-Nichols & Co.	T72-1	Lowell Technological Institute
Simpson, Gumpertz & Heger	P72-3	M.C.I. Bridgewater
Gilbert Small & Co.	Y72-1	Treatment Unit, Oakdale
Gilbert Small & Co.	Y72-5	Ind. School for Girls, Lancaster
Gilbert Small & Co.	Y72-2	Ind. School for Boys, Shirley
✓ John Guarino	Y72-4	Judge John J. Connelly Youth Ctr. Boston
Martin J. Gullity	Y72-3	Lyman School for Boys, Westborough
Martin J. Gullity	Y72-6	Lyman School for Boys, Westborough

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DESIGNER SELECTION BOARD

3. CORRESPONDENCE: (continued)

Noted for the record was Secretary Yasi's letter of July 6, 1972 advising BBC to terminate the appointment of Nils Jonsson & Assoc. on Project E72-6 as the funds for the work reverted on June 30, 1972.

4. OLD BUSINESS/OTHER BUSINESS:

The Chairman discussed the possibility of a better scheduling of projects requiring DSB attention in the future to avoid meeting during the months of June, July and August. It was also noted that during the last session of the General Court no capital outlay appropriation was enacted involving the Bureau of Building Construction. Other than reactivation of one or all of the seven (7) projects currently held in abeyance only the possibility of the need of a designer for a County project would require a meeting of the Designer Selection Board between the present and next February or March. In the interim period final comments regarding the DSB application forms to be used by designers should be submitted in sufficient time to allow for printing.

5. NEW BUSINESS:

The Board including the Department Voting Representatives voted to submit to Secretary Yasi the designers indicated as follows and appearing below in alphabetical order. On recommendation of the operating agency and because of the similarity of project requirements it was determined that one designer be nominated for more than one project noted below:

Project # Appropriation Source Account # Approp. Amt./Upset Fee	Project Title Location Estimated Constr. Cost	D.S.B. list & item # Services Authorized Suggested Designer Category
H72-9 C976 of 1971 (8072-02) 0451-9130 \$75,000 Approp.	Fire Protection Impr. Mass. Hosp. School Canton E.C.C. \$60,000	#72-3 item 9 Plans & Renovations Mechanical Engineer
<u>VOTED TO RECOMMEND</u> 2-14-76		
DD Borek Associates Inc. 175,000 Robert W. Sullivan 146 V Samuel Ussia & Assoc. 262,000	150 Causeway Street 38 Newbury Street 1300 Soldiers Field Road	Boston, Mass. Boston, Mass. Brighton, Mass.
SM72-1 C976 of 1971 (8072-57) 7390-C030 \$330,000 Approp.	Extension Utility Dist. Sys. Southeastern Mass. Univ. Dartmouth E.C.C. \$250,000	#72-3 item 15 Plans & Supervision of Construction Engineer
<u>VOTED TO RECOMMEND</u>		
Cattley, Hanack & Richard E. J. Flynn Assoc. Inc. 170 Green Engineering Affiliates	75 Tarkin Hill Road 127 Taunton Street 625 McGrath Highway	New Bedford, Mass. Middleboro, Mass. Boston, Mass.

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DESIGNER SELECTION BOARD

E72-20
C976 of 1971
(8072-02) 0451-9130
\$15,000 Approp.

Fire Protection Impr.
Worcester State College
Worcester
E.C.C. \$10,000

#72-3 item 4
Plans & Supervision of
Construction
Structural Engineer

E72-22
C976 of 1971
(8072-02) 0451-9130
\$20,000 Approp.

Fire Protection Impr.
Boston State College
Boston
E.C.C. \$15,000

#72-3 item 6
Plans & Supervision of
Construction
Structural Engineer

VOTED TO RECOMMEND

E. Lionel Pavlo Engr. Co.
Somerville Engineering
Abraham Woolf & Assoc. Inc.

80 Boylston Street
400 Highland Avenue
15 Court Square

Boston, Mass.
Somerville, Mass.
Boston, Mass.

P72-7R
C976 of 1971
(8072-01) 0451-9129
\$5,000 Upset

Exterior Restoration
Main Complex
M.C.I. Framingham
E.C.C. Unknown

#72-3 item 13
Study
Civil or Structural
Engineer

VOTED TO RECOMMEND

Cleverdon, Varney & Pike
Maurice A. Reidy Engrs.
Simpson, Gumpertz & Heger Inc.

112 Shawmut Avenue
101 Tremont Street
1696 Massachusetts Ave.

Boston, Mass.
Boston, Mass.
Cambridge, Mass.

M72-12R
C976 of 1971
(8072-01) 0451-9129
\$2,500 Upset

Modular Bldgs. for
Patient Housing
Taunton State Hosp.
Westborough
E.C.C. Unknown

#72-3 item 10
Feasibility Study
Modular Designer

VOTED TO RECOMMEND

Barnes & Jarnis
Bednarski-Stein
Construction Management
Consultants

61 Batterymarch Street
318 Main Street
140 Westbourne Terrace

Boston, Mass.
Greenfield, Mass.
Boston, Mass.

EJ72-3R
C976 of 1971
(8072-01) 0451-9129
\$15,000 Upset

Southwest (Corridor)
Community College
Wrentham, Mass.
E.C.C. \$14,000,000-17,000,000

#72-3 item 8
Feasibility Study
Architect or Planner

VOTED TO RECOMMEND

Doherty, Paddock, Upton & Assoc.
Eco Tecture-Intn'l.-Inc.
Huygens & Tappe

12 Arrow Street
6 Nutting Road
462 Boylston Street

Cambridge, Mass.
Cambridge, Mass.
Boston, Mass.

PAGE IV.
DESIGNER SELECTION BOARD

SM72-3R
C976 of 1971
(8072-01) 0451-9130
\$10,000 Upset

*Health Center 2,000,000
1st part of Plymouth County Courthouse*

New Oceanographic Lab. Bldg.
Southeastern Mass. Univ.
No. Dartmouth
E.C.C. \$1,680,000

#72-3 item 16
Study
Architect

VOTED TO RECOMMEND

Peirce & Pierce
Faloney & Sturgis
Tailman, Drake & Guay Inc.

116 Newbury Street
2 Central Square
330 Union Street

Boston, Mass.
Cambridge, Mass.
New Bedford, Mass.

RMV72-1
C1003 of 1971
6111-0029
\$250,000 Approp.

New Registry Bldg.
Beverly
E.C.C. Unknown

#72-3 item 14
Preparation of Plans
Architect

VOTED TO RECOMMEND

Caolo & Bieniek Assoc. Inc.
Oscar Padjen
Reinhardt Assoc. Inc.

380 Union Street
234 Cabot Street
55 State Street

West Springfield, Mass.
Beverly, Mass.
Springfield, Mass.

T72-3R
C976 of 1971
(8072-01) 0451-9130
\$2,000 Upset

Renov. to Cunnock Hall
Lowell Tech. Institute
Lowell
E.C.C. \$280,000

#72-3 item 17
Study
Architect

VOTED TO RECOMMEND

John Carr Assoc. Twp's
Harvey & Tracy Assoc.
Martha L. Rothman-
Elliot Paul Rothman

987 Worcester Road
143 Dewey Street
156 Milk Street

Natick, Mass.
Worcester, Mass.
Boston, Mass.

Y67-3
C633 of 1970
(8071-09) 1730-1913
\$904,300 Approp.

Forestry Camp
Nickerson State Park
Brewster
E.C.C. \$300,000

#72-3 item 1
Plans & Supervision of
Construction
Architect

VOTED TO RECOMMEND

Environmental Systems Org.
R. Scott Quinlan
Jordan L. Smith

325 Harvard Street
210 Beacon Street
84 State Street

Brookline, Mass.
Boston, Mass.
Boston, Mass.

PAGE V
DESIGNER SELECTION BOARD

E72-18R
C976 of 1971
(8072-01) 0451-9129
\$5,000 Upset

Evaluation of May Hall
Framingham State College
Framingham
E.C.C. Unknown

#72-3 item 2
Study
Architect

VOTED TO RECOMMEND

Hughes & McCarthy
John A. Newell & Assoc.
✓ Pard Team

200 West Central Street
36 So. Main Street
148 State Street

Natick, Mass.
Sharon, Mass.
Boston, Mass.

M72-11R
C976 of 1971
(8072-01) 0451-9129
\$10,000 Upset

Master Plan
Cushing Hospital
Framingham
E.C.C. Unknown

#72-2 item 27
Prep. of Master Plan
Architect or Master
Planner

VOTED TO RECOMMEND

Chapman & Goyette Assoc.
✓ Healy & Healy Arch. Assoc. *Tout's*
Rich, Lang & Cote Inc.

5 Lee Street
Fonda Del Corro Rt. 9
6 St. James Avenue

Cambridge, Mass.
Framingham, Mass.
Boston, Mass.

M72-18
C976 of 1971
(8072-02) 0451-9130
\$60,000 Approp.

Fire Protection Impr.
John T. Berry Rehab. Ctr.
No. Reading
E.C.C. \$45,000

#72-3 item 11
Plans & Supervision of
Construction
Electrical Engineer

VOTED TO RECOMMEND

Charles L. Devoe Co.
Kaufmann Assoc.
✓ Shepherd Engr. Inc.

1762 Massachusetts Ave.
4 Brattle Street
340 Main Street

Lexington, Mass.
Cambridge, Mass.
Worcester, Mass.

E72-21
C976 of 1971
(8072-02) 0451-9130
\$20,000 Approp.

Fire Protection Impr.
Salem State College
Salem
E.C.C. \$15,000

#72-3 item 5
Plans & Supervision
of Construction
Electrical Engineer

E72-19
C976 of 1971
(8072-02) 0451-9130
\$20,000 Approp.

Fire Protection Impr.
Lowell State College
Lowell
E.C.C. \$15,000

#72-3 item 3
Plans & Supervision
of Construction
Electrical Engineer

VOTED TO RECOMMEND

Hayden, Harding & Buchanan
John Milo
✓ Temper Engr. Inc.

1340 Soldiers Field Rd.
84 Rockway Ave.
177 State Street

Boston, Mass.
Marblehead, Mass.
Boston, Mass.

PAGE VI
DESIGNER SELECTION BOARD

E72-23
C976 of 1971
(8072-02) 0451-9130
\$73,000 Approp.

Fire Protection Impr.
Bridgewater State College
Bridgewater
E.C.C. \$57,000

#72-3 item 7
Plans & Supervision
of Construction
Electrical or
Mechanical Engineer

VOTED TO RECOMMEND

Francis Assoc. *DD to check*
✓ Paul E. Pritzker Assoc.
Shooshanian Engr. Inc.

7 Barnabas Road
680 Hancock Street
129 Malden Street

Marion, Mass.
Quincy, Mass.
Boston, Mass.

6. INTERVIEWS:

None Scheduled

7. NEXT MEETING:

The next meeting of the Designer Selection Board will be subject to recall from the Chair.

8. ADJOURNMENT:

The Designer Selection Board adjourned at 3:30 p.m.

APPROVED _____

Chairman

SUBMITTED _____

BBC Coordinator, DSB

To determine whether the entries "Toots," "DD," or "Vic" had any significance with respect to design contract awards, the Special Commission obtained evidence from a number of the design firms next to whose names the handwritten entries appear. The following is a summary of the evidence obtained by the Special Commission with respect to those firms.

a. Borek Associates, Inc.

The DSB's first set of recommendations listed on the minutes for the July 26, 1972 meeting concern a contract for fire protection improvements for Mass. Hospital School in Canton. Next to the name of Borek Associates are the initials "DD," presumably those of Donald Dwight. These are written in black ink. This firm name is also circled in blue ink. The penciled note "2-1968 175,000," appears to refer to previously awarded contracts.* Next to the name of Robert W. Sullivan is a red pencil checkmark. This firm is also underlined in red pencil. Comr. Yasi awarded the contract to Robert W. Sullivan on August 10, 1972. The name of the third firm, Samuel Ussia and Associates, has "Vic" next to it, presumably referring to Victor Zuchero. The "V" is in black ink, the "IC" in blue. The penciled "2-1968 262,000," apparently refers to a previously awarded contract.**

Harold Greene testified that he did not recognize as his handwriting the marks and notations surrounding the DSB's first set of recommendations and denied knowing whose handwriting it might be.³⁴⁰ It would appear that in the case of this first set of recommendations, Dwight had recommended the first name, and Zuchero the third. The original DSB letter on which Yasi signed his name next to the selected firm to indicate his decision contains two dots, one before Borek Associates and one next to Robert W. Sullivan.***

The testimony of several people concerning their knowledge of Borek Associates, Inc. suggests that this firm did not receive the contract award because of a perceived personal conflict problem known only to Yasi. Zabriskie

* Borek Associates received two contracts during DeFalco's term as Commissioner, 1967-68: one for renovations at Pondville Hospital (E.C.C. 45,000), the other for modernization of sanitary facilities at Lyman School for Boys (E.C.C. 147,000). Further details on these awards are given in the chart summarizing DeFalco awards, reproduced as A&F Appendix Exhibit #20.

** It is unclear whether this notation refers to a contract awarded to Ussia during DeFalco's term, 1967-68, for new power units at Tewksbury Hospital (E.C.C. 350,000) or to a contract awarded earlier in Yasi's term (1971-72) to replace boilers in the power plant at Monson State Hospital (E.C.C. 262,500). A chart summarizing Yasi's contract awards is reproduced as A&F Appendix Exhibit #43.

*** The 7/31/72 DSB letters to Yasi and his 8/10/72 transmittal letter which concern the contracts appearing on the 7/26/72 DSB minutes are reproduced as A&F Appendix Exhibit #46. The dots do not reproduce well, however, both because they are in pencil and because they are usually covered by Yasi's signature, although they are visible on the originals. See also the chart summarizing Yasi's contract awards, reproduced as A&F Appendix Exhibit #43.

stated that there was one firm with a dot next to it on the DSB letter which Yasi did not select because he knew the firm involved and a principal in the firm lived near him.³⁴² A&F Engineer Phil Dick identified that firm as being Borek Associates.^{343*} Dick testified that he and Yasi discussed Borek Associates on one occasion. Dick recalled that after the DSB had recommended Borek Associates as one of three finalists, Yasi then called a meeting with Zabriskie and Dick, at which he indicated that he was reluctant to choose the firm because the Yasi and Borek families both lived in Swampscott and Mrs. Yasi and Mrs. Borek were friendly with each other. Comr. Yasi testified that he did not recall Dwight calling him directly about the August 10, 1972 contract award.³⁴⁴ Lt. Governor Dwight testified that he had no recollection of speaking on behalf of the firm to any Commissioner, either when asked or on his own initiative.³⁴⁵

Although Gordon Borek, President and Treasurer of Borek Associates in 1972, did not receive this specific contract, he testified in a private hearing before the Commission that his firm did receive other state and county contracts.³⁴⁶ Prime contracts the firm received from A&F included a Pondville Hospital contract in 1967 and a Lyman School for Boys contract in 1968.** Borek also received numerous contracts as a consultant for other firms between 1968 and 1978.***

Borek stated that he and his wife had made political contributions and participated in Republican party activities.^{347*1}³⁴⁸ When asked at a private hearing whether he or any firm for which he had worked ever made a payment of \$100 or more to any entity in anticipation of or in return for a state or county contract, Borek refused to answer.³⁴⁹ Because Dwight's initials appear beside the name of Borek Associates on the July 26, 1972 DSB minutes, the Special Commission asked Borek about his knowledge concerning Dwight interceding for the firm in the award of contracts. Borek testified that he had no recollection of Dwight ever assisting his firm in obtaining design contracts.³⁵⁰

* Phil Dick testified that he did not believe Yasi's refusal to select Borek Associates, Inc., occurred with respect to this specific contract. However, this would appear to be the case since July 1972 was the only occasion on which Borek Associates, Inc. was recommended by the DSB and not selected by Yasi. See chart on Yasi awards, reproduced as A&F Appendix Exhibit #43.

** See chart on DeFalco awards, reproduced as A&F Appendix Exhibit #20.

***See chart prepared by Borek, reproduced as A&F Appendix Exhibit #47.

*¹According to the Boreks' records (which may not be complete), between June 1968 and December 1978 they contributed at least \$3,500 to various Republican party campaigns, affairs and committees, \$725 of which preceded the 8/10/72 award to Robert Sullivan of the contract for which Borek Associates had also applied.³⁴⁷ JoAnne Borek held various political offices between 1964 and 1976.³⁴⁸ Documents prepared by the Boreks regarding their political contributions and a list of Mrs. Borek's political offices are reproduced as A&F Appendix Exhibit #48.

b. Samuel Ussia and Associates

Although Samuel Ussia did not receive the above contract, his private testimony before the Special Commission concerning his political contributions and activities gives substantial reason for the appearance of "Vic" beside the name of Ussia's firm on the July 26, 1972 minutes. Sargent campaign records and Ussia's testimony indicate that Ussia contributed about \$2,000 between 1970 and 1975.³⁵¹* Ussia also testified to organizing and participating in Sargent campaign activities through the Italian American Committee.³⁵² He met Victor Zuchero through these activities.³⁵³ Ussia testified that he did not recall discussing state work with Zuchero and would be surprised to learn that Zuchero had interceded for him.³⁵⁴

Zuchero, however, testified both publicly and privately that Ussia was one of the architects who contacted him to say he was under consideration for a contract.³⁵⁵ Ussia asked him to "put in a good word" for him. Zuchero then contacted Greene to tell him that Ussia was a supporter of Governor Sargent. Zuchero testified that the contract on the July 26, 1972 minutes may have been one for which Ussia asked him to intercede.³⁵⁶ Greene testified that he recalled that someone contacted him concerning the award of a contract to Ussia, but he did not remember if it was Zuchero.³⁵⁷

Although Samuel Ussia did not receive the Mass. Hospital School contract listed on the July 26, 1972 minutes, he did obtain an earlier contract on May 2, 1972 to replace boilers at Monson Hospital and a later contract on December 27, 1974 to perform an energy conservation study for various institutions.^{358**} These awards in all probability were connected to Ussia's political contributions and activities.

* Political Contributions by Samuel Ussia

10/26/70	\$100
7/ 9/71	300
9/ 7/72	500
11/27/73	200
9/23/74	500
9/23/74	500
9/13/74	100
12/13/74	100
3/11/75	100

(This information was obtained from the Sargent Committee files. A copy of Ussia's card in the files is reproduced as A&F Appendix Exhibit #49.)

** For these awards made during the terms of Yasi and Marchand, see A&F Appendix Exhibit #43 & 45.

c. E.J. Flynn Associates, Inc.

The DSB's second set of recommendations was for an extension utility distribution system contract at Southeastern Mass. University (SMU) in Dartmouth. The firm E.J. Flynn Associates, Inc. is circled in blue ink and "Toots," the nickname of Republican fundraiser Albert Manzi, is written on the side in blue ink.

Patronage Secretary Harold Greene during his testimony before the Special Commission identified "Toots" as his handwriting.³⁵⁹ He could not, however, explain to the Special Commission how this writing came to be placed on the July 26, 1972 minutes.

Commissioner Yasi awarded this contract to E.J. Flynn Associates, Inc., on August 10, 1972. The DSB letter on which Yasi signed his name next to the selected firm to indicate his decision contains a dot next to the firm's name. Next to Green Engineering Affiliates, the third firm on the second set of recommendations on the July 26, 1972 minutes, is "Vic" written in blue ink and then crossed out with black ink.

The private testimony of Evans Flynn before the Special Commission suggests an explanation for the appearance of "Toots" beside the name of Flynn's firm on the July 26, 1972 minutes. Flynn testified that he first met Albert "Toots" Manzi at a fundraiser in the late 1960's.* Manzi was in charge of the affair.³⁶¹

Flynn had further contact with Manzi in the late 1960's when he visited Manzi in his Worcester grocery store.** Flynn had received the impression that Manzi was an influential person with the power to help him in obtaining state contracts. According to Flynn, the purpose of his visit to Manzi's grocery store was to meet Manzi personally. During the grocery store meeting, Manzi asked Flynn what kind of work he did and told him he would be in touch with him. Manzi expressed the hope that Flynn would help the campaign.³⁶²

Flynn later received several calls soliciting contributions, but did not contribute until 1970 when Manzi asked him to buy tickets to a Sargent fundraiser. Flynn bought ten tickets at \$100 apiece. He paid for these with a

* Flynn's firm served as a consultant engineer for Masiello & Associates in the 1960's. According to Flynn it was at Frank Masiello's suggestion that he began attending political functions for Governor Volpe with Frank Masiello. According to Frank Masiello's testimony, summarized in the Peabody Era section of this report, supra, Flynn participated in fundraising events even earlier, during Peabody's campaign.

** Flynn testified that Frank Masiello may have told him to pay this visit to Manzi. He stated that he visited Manzi at his Worcester grocery store after Masiello called Manzi.

check for \$1000 dated September 15, 1970. Flynn testified that he made the contribution because he felt it was the "practical" thing to do if he wanted to obtain state work.³⁶³

Manzi continued to contact Flynn between September 1970 and 1972 concerning fundraising. He called Flynn six to eight times per year. Flynn, during his testimony, mentioned that he may have made one further contribution to Manzi.³⁶⁴ The Special Commission obtained information from Governor Sargent's fundraising records indicating that Flynn contributed \$1000 on November 8, 1971.*

In 1972, about three to four weeks after Flynn submitted his application for the SMU contract listed on the July 26, 1972 minutes, he visited Manzi in his Turnpike Authority office at the Prudential Center. Flynn told Manzi he was filing for the job and would like to obtain it. At this time Flynn did not know the status of his application or whether the DSB had yet recommended three finalists. After he expressed his interest in the contract, Manzi said words to the effect, "Let's give it a good try, Joe. I will be in touch with you." Flynn did not mention to Manzi his 1970 \$1000 contribution because he assumed that Manzi would have the information. The entire conversation lasted about five minutes. Manzi never asked Flynn about his qualifications.³⁶⁵

Flynn's next contact with Manzi occurred when Manzi called him on or about August 10, 1972 to tell him that A&F had awarded him the SMU contract. Manzi was the first to notify Flynn of the award. Flynn assumed that Manzi was instrumental in this award. He testified that he knew of no reason why Manzi interceded on his behalf other than his political contributions.³⁶⁶

d. Abraham Woolf & Associates, Inc.

The DSB's third set of recommendations concern fire protection improvements to Worcester State College and Boston State College. The firm of Abraham Woolf & Associates is checked and circled. A "V," presumably referring to Victor Zuchero, appears next to the firm's name. A red pencil line is also beside the name. Harold Greene testified that he did not recognize any of these marks and notations as his.³⁶⁷ He denied knowledge of who might have made the marks and notations.

* Flynn's card in the Sargent Committee files is reproduced as A&F Appendix Exhibit #50. Flynn's card in these files does not reflect the 1970 contribution to which he testified, but he produced this check as documentation at his private hearing.

On August 10, 1972 Commissioner Yasi awarded the contract to Abraham Woolf & Associates. The DSB letter on which Yasi signed his name next to the selected firm to indicate his decision contains a dot next to the name of the firm.

Abraham Woolf both publicly and privately testified to making a \$500 contribution to Sargent on July 2, 1970.* He had an appointment to see the Governor at the Somerset Hotel. Woolf handed his check to Sargent personally. Other professionals from the architectural and engineering field were there at the same time. Woolf wanted to make his contribution in person so that Sargent would know that Woolf took an interest in his campaign and had helped him. Woolf hoped Sargent would remember him if his name were ever presented to him.³⁶⁹

At some point after making the contribution and after hearing of Zuchero's name and function from colleagues and friends, Woolf called Zuchero to set up an appointment. When the two men met, Woolf asked Zuchero if he knew Woolf had contributed to the campaign. Zuchero said he would look it up. Woolf told Zuchero that he wanted to be considered for state projects. Zuchero suggested Woolf contact someone at the Department of Public Works. Zuchero later, when Woolf recontacted him, indicated that he had verified Woolf's contribution.³⁷⁰

Woolf placed his meetings and conversations with Zuchero in 1973, (i.e. after the contract which Yasi awarded him on August 10, 1972), and stated that he discussed Department of Public Works contracts with Zuchero, not Department of Education ones (the Department of Education is the user agency for the contract awarded on August 10, 1972). However, because Woolf at one point speaks of his discussions with Zuchero in the context of his application for the projects appearing on the July 26, 1972 DSB minutes, and because Woolf testified that he didn't apply for any state jobs after obtaining the 1972 contracts (and therefore wouldn't have had any reason to contact Zuchero), it would appear that his contacts with Zuchero were in 1972 and not 1973. Zuchero has no recollection of contacts with Woolf.³⁷¹

e. Tallman, Drake and Guay

The DSB's seventh set of recommendations concern a contract for a new oceanographic lab building, Southeastern Mass. University at North Dartmouth. The name of the firm Tallman, Drake and Guay is checked and underlined in red pencil. The firm is also circled in blue ink. The July 26, 1972 minutes include

* A copy of the card obtained from the Sargent Committee files which lists Woolf's 1970 contribution, as well as a 1973 contribution, is reproduced as A&F Appendix Exhibit #51.

additional marks beside the names of the two firms which did not receive the contract: an indistinct red pencil mark next to Feloney and Sturgis, an indistinct "Out" in blue ink beside Pierce and Pierce, and the penciled remarks "Health Center 2,000,000" and "1st part of Plymouth County Courthouse." Greene has testified to writing the last three comments.³⁷² He stated that he wrote the last two comments after Zabriskie orally communicated the information to him. These last notations written in pencil appear to refer to previously obtained contracts.

On August 10, 1972 Commissioner Yasi awarded the contract to Tallman, Drake and Guay. The DSB letter on which Yasi signed his name next to the selected firm to indicate his decision contains a pencil dot next to the name of the firm.

Between 1969 and 1974 Charles Drake made political contributions totaling \$3600. \$2600 of these contributions were made prior to the August 10, 1972 award.*

Tallman, Drake & Guay also received the award of the Plymouth County Second District Courthouse on November 20, 1972 (it is this contract that "1st of Plymouth County Courthouse" seems to foretell).** According to the testimony of handwriting expert McCarthy, the DSB letter on which Commissioner Cowin signed his name is one of the 29 (out of 30 contract awards) cases in which a discernible mark appears written in a different substance than Cowin's signature. ³⁷⁴

f. John Carr Associates

The DSB's ninth set of recommendations concern a contract for renovations to Cummock Hall, Lowell Tech Institute. Next to the name of the first firm, John Carr Associates, is written "Toots," in black ink. Greene testified that the entry "Toots" was not in his handwriting and that he did not know whose it was.³⁷⁵ The name of Carr's firm is also circled in blue ink. The name of the second firm, Harvey & Tracy Associates, is checked and underlined in red pencil.

*Political contributions by Charles Drake

12/ 1/69	\$500	12/ 2/69	\$200	8/19/70	500
8/24/70	200	6/ 2/71	500	10/14/71	200
3/13/72	500	2/ 2/73	500	9/13/74	500

(A copy of the card obtained from the Sargent Committee files which lists Drake's contributions is reproduced as A&F Appendix Exhibit #52.)

**See chart on Cowin awards, reproduced as A&F Appendix Exhibit #44. For more information concerning the award of this contract, see the Hingham District Court section of the report.

On August 10, 1972 Commissioner Yasi awarded this contract to John Carr Associates. The DSB letter on which Yasi signed his name next to the selected firm to indicate his decision contains a pencil dot next to the name of the firm.

John Carr, a Sargent contributor, testified during both private and public hearings before the Special Commission that he submitted about one hundred applications for state contracts between 1968 and 1972, but was not successful in winning any state contracts³⁷⁷ until after he approached Republican fundraiser Albert Manzi in July 1972, the month before the August 10, 1972 award to Carr. Several people (Carr estimated 6-12) in the architectural field had mentioned Manzi to Carr as a power in the state and someone who could help Carr obtain state work because of his contacts.³⁷⁹ Carr tried to call Manzi several times in April 1972 and early July 1972^{380*} Carr finally reached Manzi in July 1972. The two men made an appointment to meet in Manzi's Turnpike Authority Office at the Prudential Center on July 17, 1972.³⁸¹ (See A&F Appendix Exhibit #53)

At this July 17, 1972 meeting, Carr and Manzi had a short conversation, lasting 5-6 minutes, during which Carr did most of the talking, telling Manzi of the qualifications of his firm and his desire for state work.³⁸² Manzi promised to investigate the matter and see what he could do.³⁸³ Carr testified that neither he nor Manzi mentioned political contributions.³⁸⁴ It is worth noting, however, that Carr had contributed \$500 to the Sargent campaign between 1969 and 1970, that he later contributed \$300 in 1975 and that he also contributed \$50 to the Dwight Committee in 1974.^{385**}

Sometime after the July 17, 1972 meeting, Carr again tried to reach Manzi. He eventually received a message to call Manzi. When he reached Manzi on July 27, 1972 (the date of the DSB meeting and minutes), Manzi told Carr, "I think you had some good fortune at the BBC today. They'll let you know."³⁸⁶ (see A&F Appendix Exhibit #53)

*Carr's diary contains 4/14/72, 4/18/72, 4/19/72, 4/20/72, 7/13/72, 7/17/72, 7/19/72 and 7/26/72 references to Manzi. The relevant pages of his diary are reproduced as A&F Appendix Exhibit #53.

**A copy of the card obtained from the Sargent campaign files which lists Carr's contributions is reproduced as A&F Appendix Exhibit #54.

Carr was officially notified of the contract award soon after his conversation with Manzi. He testified that he received a standard form letter from the DSB around August 4, 1972,³⁸⁷ but he probably received this letter somewhat later because the A&F Commissioner's award letter is dated August 10, 1972.

Because he had not been successful in obtaining BBC projects until he contacted Manzi, Carr obtained the impression that Manzi was instrumental in the decision-making process.³⁸⁸ Although Manzi had no official position with the BBC, DSB or A&F, he knew of the DSB recommendation or A&F decision before it was officially communicated to Carr.

Carr also testified that in connection with his interest in obtaining state work in 1974 he contacted Governor Sargent's office. A woman from the Governor's office told Carr to get in touch with Robert Dumont, who was the successor to Patronage Secretary Harold Greene.³⁸⁹ She told Carr that Dumont "would take my brochure and make the presentation from there on if it was at all worthy." Carr subsequently met with Dumont in his basement office at the State House. Carr described his firm and interest in state work to Dumont and told him that he had contributed to the Sargent Campaign. Dumont promised to see what he could do. Carr testified that he received the contract for the Worcester Registry of Motor Vehicles (awarded by A&F Commissioner Marchand on 10/4/74) within months of his conversation with Dumont.^{390*}

g. R. Scott Quinlan

The DSB's tenth set of recommendations listed on the minutes from the July 26, 1972 meeting concern a contract for a forestry camp at Nickerson State Park in Brewster. Next to the name of the firm R. Scott Quinlan are the initials "DD," presumably referring to Lt. Governor Donald Dwight, in blue ink. The firm's name is circled in blue ink and checked and underlined in red pencil.

Greene testified that "DD" was not in his handwriting.³⁹¹ He did not identify whose handwriting it was. On August 10, 1972 Commissioner Yasi awarded the contract to R. Scott Quinlan. The DSB letter on which Yasi signed his name next to the selected firm to indicate his decision contains a dot.

R. Scott Quinlan testified both privately and publicly before the Special Commission concerning his contacts with and political contributions to Dwight. He first met Dwight at the Somerset Hotel on August 6, 1970 after receiving in the mail an invitation to meet Dwight, who was running for Lt. Governor at this

* See chart on Marchand's contract awards, reproduced as A&F Appendix Exhibit #45.

point. Quinlan's diary contains an August 6, 1970 entry reading "Donald Dwight Room 451."* The two men talked for about fifteen minutes, generally discussing the contract award process and ways in which Dwight, as Lt. Governor, might improve the system. Dwight indicated that he planned to play an active role in A&F and BBC as Lt. Governor. Although Quinlan testified that Dwight may have asked him about his own experience with the selection process and solicited his suggestions for improvements to BBC operations, he did not recall any specific discussions about his lack of success in obtaining state contracts and interest in obtaining same. Quinlan had made several applications between 1967 and 1972 but had not been successful in winning any awards.³⁹²

After his August 6, 1970 meeting with Dwight, Quinlan contributed \$100 to the Dwight Committee on August 14, 1970.³⁹³ Quinlan later also attended a 1972 fundraiser at the Chateau de Ville where Dwight was present.³⁹⁴

On June 22, 1972 the DSB gave public notice soliciting bids on Brewster forestry camp. Quinlan has testified that he applied for this contract.³⁹⁵ His diary reveals that he had several contacts with Dwight or Dwight's office when applying for the project.^{396**} On June 30, 1972 the diary reads "Frank Gediman, Don Dwight Room 22C." (Gediman was a BBC employee.) The entry suggests a meeting with the two men, singly or together. Quinlan had no recollection of a June 30, 1972 meeting with either man. On July 28, 1972 the diary reads "10:00 Don Dwight," suggesting a meeting with Dwight. Quinlan did not recall meeting with Dwight on the date, which is two days after the DSB met and voted him one of three finalists.

Quinlan testified that he did recall that when he learned from Walter Poitras (the Director of the BBC) that he was one of the three firms recommended by the DSB on July 26, 1972,³⁹⁷ he called Lt. Governor Dwight's office to see if the selection had been made yet and, if not, to request notification when it was.³⁹⁸ Quinlan testified and his diary suggests that this call occurred on July 28, 1972.³⁹⁹

Why did Quinlan call Dwight when Dwight, as Lt. Governor, had no official position with A & F? Quinlan testified that he called Dwight because he had met him and had made a contribution.⁴⁰⁰ He assumed Dwight was overseeing and controlling the selection process, based on their 1970 meeting when Dwight told Quinlan of his plan to play an active role in BBC matters as Lt. Governor.⁴⁰¹

* The relevant pages of Quinlan's diary are reproduced as A&F Appendix Exhibit #54 A.

** Ibid.

He stated that he preferred to get the information from above.⁴⁰² He thought that contacting Dwight was the faster way to find out about the decision rather than waiting for it to be transmitted through the official channels.⁴⁰³

When Quinlan called Dwight's office, he spoke to David Marchand, who was then Secretary to Dwight.* Quinlan indicated that he was an architect and supporter of Dwight interested in the status of a contract for which he had applied. Marchand offered to investigate the matter. He reassured Quinlan that, having made the list of three finalists, he was obviously qualified and had a good chance at the contract. Although Quinlan lacked specific knowledge of what assistance Dwight provided to him, the project was the only state contract he ever received.⁴⁰⁴ And next to the name of Quinlan's firm on the July 26, 1972 minutes: "DD."

h. Healy & Healy Architectural Associates

The DSB's twelfth set of recommendations listed on the minutes for the July 26, 1972 meeting concern a contract for a master plan for Cushing Hospital in Framingham. Next to the name of the firm Healy & Healy Architectural Associates appears the word "Toots" in black ink. The firm's name is also circled in blue ink, checked and underlined in red pencil. Harold Greene testified that "Toots" and the other marks were not in his handwriting.⁴⁰⁵ He stated that he had no knowledge concerning who made the marks and notations. On August 10, 1972 Commissioner Yasi awarded this contract to Healy & Healy. The DSB letter on which Yasi signed his name next to the selected firm to indicate his decision contains a pencil dot next to the name of the firm.

William Masiello** testified before the Special Commission that he discussed obtaining this and other contracts with Edward Healy.^{406***407} Masiello recommended that Healy contact James Kerr, the voting representative from the user agency (the Department of Mental Health). Masiello stressed the need for obtaining the DSB's priority rating (an informal ranking) and lining up the vote of the user agency representative.

* Quinlan's diary under the heading "Names and Addresses" also contains the entry "Donald Dwight (Marchand)." This and other relevant pages have been reproduced as A & F Appendix Exhibit #54A. Marchand later became Commissioner of A & F. The next subsection of this report, entitled Commissioners, will describe his term as Commissioner.

** For further information concerning the activities of William and Frank Masiello, see Volumes 3 and 5 of this report.

*** Healy had previously been a member of Masiello & Associates and Masiello & Healy.⁴⁰⁷

According to Masiello, Healy contacted Kerr, and persuaded Kerr to give him his DSB vote. Ultimately, Healy & Healy Architectural Associates appeared on the DSB list of three finalists for the Cushing Hospital master plan. Masiello testified that he talked to Albert Manzi about this contract. He told Manzi that he could get him 10% of a \$10,000 study because he had asked Healy for \$1000 and Healy had agreed to make the payment. William Masiello stated "I had everything set. Manzi took care of it. Mr. Healy did get the contract."⁴⁰⁸ Masiello stated that Healy eventually gave him only \$500, based on the reasoning that he had made a \$500 contribution in 1970 to Kevin White, which should be included as part of the 10%. Masiello accepted this amount. *⁴⁰⁹

Edward Healy testified both privately and publicly before the Special Commission that before he won the Cushing Hospital contract on August 10, 1972 he had applied for but not obtained state contracts during the period 1968 through 1972.⁴¹⁰ He agrees with William Masiello's testimony that he received the August 10, 1972 contract after agreeing to pay William Masiello \$1000 if the contract was awarded to the Healy firm.⁴¹¹

As Healy related the circumstances of this contract award, Masiello had approached Healy to offer his assistance in obtaining state work for Healy's firm.⁴¹² Masiello pointed out his ability to get public work through his connections.⁴¹³ Healy recalled that Masiello named Kelly as one of these connections. He did not remember if Masiello mentioned Manzi but testified to his awareness then that the Masiello's knew Manzi. Because Healy knew that the Masiello's had ties with both Kelly and Manzi, he believed that William Masiello was capable of influencing the selection process.

Masiello instructed Healy that he had to make the DSB list of three finalists on his own before Masiello would provide any assistance.⁴¹⁴ Healy said he did not learn any specifics as to how Masiello would help him.⁴¹⁵ He agreed to pay the \$1000 fee.⁴¹⁶ Healy subsequently applied for the contract, contacted the user agency representative and had an interview with the DSB during which he gave a presentation.⁴¹⁷

*Frank Masiello has testified to his knowledge that Healy asked William Masiello for assistance in obtaining the contract, that Healy paid a fee to Masiello after he won the contract, and that William Masiello gave the money to Manzi in return for the contract.⁴⁰⁹

William Masiello notified Healy on or after July 26, 1972 that he had made the DSB list of finalists.⁴¹⁸ Masiello gave Healy to understand that Masiello would now assume responsibility for ensuring that Healy received the contract.⁴¹⁹ Masiello, however, did not specifically describe what actions he planned to take.⁴²⁰

Masiello later called Healy to tell him that he had won the job.⁴²¹ Masiello implied that he had a role in the award to Healy, but gave no specifics. Healy never knew with whom Masiello had talked, nor what he had done.⁴²²

It is instructive to juxtapose William Masiello's testimony with the notation on the copy of the July 26, 1972 minutes found in Patronage Secretary Greene's files. Masiello testified that after making the arrangement with Healy, he notified Manzi that Healy would pay \$1000 for the contract. Masiello then stated "Manzi, took care of it." On the July 26, 1972 minutes, the entry "Toots" appears next to the name of Healy's firm. On August 10, 1972 Yasi awarded the contract to Healy.

It seems reasonable to conclude from the accumulation of detail revealed in the eight summaries above that Manzi, Dwight and Zuchero did have input into those contract awards, and that the notes of their names next to certain architectural firms on the July 26, 1972 DSB minutes are not random markings but, rather, were put there for a purpose. Nor is there any reason to believe that what happened with respect to this one batch of design contract awards was unique or anomalous during the Sargent administration. The fact that the marked DSB minutes document was preserved in storage these many years is unique; the information reflected therein of political input by Manzi, Dwight and Zuchero into the design contract award process is corroborative of other evidence before the Special Commission.

3. Desmond & Lord; Bristol County Jail Contract Award

The Special Commission obtained from Governor Sargent's files in the state archives three documents relating to the scheduling of an appointment and a golf game between Governor Sargent and Richard Thissen. The documents suggest the involvement of Dwight and Zuchero in discussions with architects about state design contract awards.

The first document is reproduced below:

REQUEST FOR APPOINTMENT

To Steve Teichner

Return Date June 22, 1973

From Jane Clifford

APPOINTMENTS OFFICE: INFORMATION

Request from Dick Thissen (742-5440)

Purpose to discuss architect jobs (15 minutes)

Date and time requested _____

Comments He's member of Governor's Club. Vic would like him to meet with Governor. Is there any reason he hasn't been given any architect jobs?

*two July 3
at 3:00 PM*

POLICY OFFICE: RECOMMENDATION

Accept _____ Deny ~~_____~~ No Opinion X Advice only ~~_____~~

Staff to attend _____ Firm Position _____

Comments Dwight as Cowin could
see him

Initials ST

APPOINTMENTS OFFICE: ACTION

Accepted _____ Date _____ Time _____

Meeting Required _____

Briefing: date and time _____

Contact person _____

Denied (meeting required) _____

Denied (action required) _____

As a member of the Governor's club, Thissen had contributed \$500 annually since 1970 to the Sargent campaign.*

Jane Clifford Fowler, the Governor's Appointment Secretary in 1973, stated in an interview by Special Commission staff, that a secretary in her office probably typed the above document. Fowler identified the note "Tues. July 3, 3:00 p.m." as her handwriting.⁴²³

Steven Teichner, the Governor's Special Assistant in 1973, in an interview by Special Commission staff, identified the note "Dwight or Cowin would seem better" and the initials "SJT" as his handwriting, with the exception of the doodle marks, which Fowler indicated are probably hers.

*Political Contributions by D. Richard Thissen:

03/09/70	\$500
05/10/71	500
09/21/72	500
07/11/73	500
05/02/74	500

(The Special Commission obtained this information from the Sargent Committee files. A copy of Thissen's card is reproduced as A & F Appendix Exhibit #55.)

Teichner stated that he thought Cowin was a better suggestion because of his official role as Secretary of A & F with respect to the award of design contracts. He thought Dwight was a better suggestion because he was the Governor's liaison with the Governor's Club, of which Thissen was a member, and the administration's liaison with the business community.*423A

Teichner stated that he did not know what, if any, action was taken concerning this request for an appointment between Thissen and Governor Sargent. He placed an "X" in the "Advice only" column because the request was not within his normal jurisdiction and in the "No opinion" column because he didn't know Thissen or care whether he obtained the requested appointment.⁴²⁴

Jane Clifford Fowler stated that after she received Teichner's comments she may have contacted either Zuchero or Dwight to let them know of Teichner's reaction. It was her judgment that whoever she spoke to, Zuchero being the more likely one, told her to schedule the appointment, and that during this conversation she wrote "Tues. July 3 3:00 p.m." as the time agreed upon for the appointment.⁴²⁵

Victor Zuchero has testified both privately and publicly before the Special Commission that he knew Thissen was a member of the Governor's Club and an architect. He stated, however, that he did not remember ever discussing state contracts with Thissen between July 1970 and November 1974, ever receiving a request from Thissen for assistance, or ever putting in a good word for Thissen. Zuchero further testified that he did not recall Thissen asking him to set up an appointment for Thissen with Governor Sargent concerning obtaining state work. Zuchero did not remember asking Jane Clifford Fowler to arrange an appointment with the Governor for Thissen in June 1973.⁴²⁶

The second document is entitled "Schedule for Governor Francis W. Sargent, Tuesday, July 3, 1973."** Next to the time 3:00 p.m., Thissen is listed as having an appointment in the Governor's office. This corresponds to the date and time given by Jane Clifford Fowler's handwritten note on the Request for Appointment form described above. Zuchero testified that he had no knowledge about this meeting between Thissen and Sargent.⁴²⁷ It is noteworthy that Zuchero is also listed on this document as having an appointment with the Governor in the Boston office at 4:00 - 5:00 p.m.

*Sargent testified that to his knowledge Dwight was not liaison to the Governor's Club 423A

**This document is reproduced as A & F Appendix Exhibit #56.

The third document is an August 23, 1973 memorandum to Governor Sargent from Jane Clifford Fowler regarding an August 25, 1973 golf date. *

It reads:

The Governor will play golf on Saturday August 25, 1973, with Tip O'Neill, Dick Thissen and Vic Zuchero. The game will be played at Oyster Harbors in Oysterville[sic], at 9:00 a.m.

Jane Clifford Fowler stated that such a memo would have been typed by the secretary, but she had no specific recollection of who set up the golf date or informed her office of it.⁴²⁸ She did indicate that the Governor played golf with Zuchero frequently and that it was not unusual for Zuchero to set up games with himself and the Governor. Zuchero testified that he had no recollection of being scheduled to play golf with Thissen and Sargent on August 25, 1973 at Oyster Harbors.⁴²⁹ He denied ever playing there.

In an interview by Special Commission staff, David Nagle, Appointment Secretary to Governor Sargent from January 1969 until February 1973, stated that when he was Appointment Secretary, Thissen would occasionally call his office to try to arrange a golf match with himself, Tip O'Neill, and Governor Sargent.⁴³⁰ Since Nagle was no longer Appointment Secretary in August, 1973, his statement indicates that Thissen attempted to set up golf dates prior to the occasion which the August 23, 1973 memo describes. Oyster Harbors receipts supplied by Richard Thissen to the Special Commission pursuant to summons contain a greens fee charge for August 25, 1973. The receipt lists Governor Sargent as a guest.**

Governor Sargent testified at a private hearing that he only knew Richard Thissen as one of hundreds of people he met at political gatherings, and estimated that he had met Thissen three or four times under those circumstances.⁴³¹ Governor Sargent, after reviewing the documents discussed above, said that he did not recall ever meeting Thissen either in the Governor's office or at a golf match, and that he did not recall ever discussing design contracts with Thissen.⁴³² Sargent said that there might have been a general discussion:

* This document is reproduced as A & F Appendix Exhibit #57.

**See greens fee receipt, reproduced as A & F Appendix Exhibit #57A.

- Q. Governor, would a meeting with a Governor's Club member to discuss architect contracts be the sort of meeting that you would remember?
- A. You know, I have thought about this a lot since we last met, and these various documents, I suppose it's possible that Thissen could have said, gee, when am I going to get some work from this administration, I don't seem to get any work. I suppose he could have said that. But, if he ever said to me I am an architect/designer, I want -- I am interested in a job, a certain job at a certain location, I think I would have remembered that. But, if he was just generally whining about the fact he wasn't getting any work, that would be not unusual for a lot of people, I think, you know, they felt that they ought to be made a judge, or that they ought to have been this or that, and they might have mentioned it to me.⁴³³

If such a complaint about not getting state work were brought to his attention, Sargent said that he would probably instruct someone to look into it:

- Q. But, is it your testimony, Governor, Mr. Zuchero never said to you that so and so has been a contributor or supporter this year and that year, he's an architect or engineer, he doesn't feel he's received any contracts, or the contracts he should be getting, when are we going to take care of him?
- A. I suppose he might say that to me, but again, I don't think he'd say such and such hospital or jail or anything like that. He might say I hope that so and so who has been active in fund-raising, is eventually going to get some work, and I would say if he's qualified I hope he does.
- Q. Other than your response to Mr. Zuchero, would you do anything else?

A. I might very well turn to whoever was there at that time, and likely it would have been the chief secretary, and said I don't know whether this is correct, Vic says this guy has never gotten any work, I don't know whether he has or hasn't, I don't know whether he's qualified or isn't, and probably we ought to look into it. He might eventually get something, maybe he wouldn't, I don't know.⁴³⁴

There was no capital outlay in 1973 and, therefore, no design contract awards.⁴³⁵ The next group of design contracts was awarded in February, 1974. On February 19, 1974, A & F Commissioner Cowin awarded a 5.5 million dollar (ECC) contract for Bristol County Jail to Desmond & Lord.* According to handwriting expert McCarthy's testimony, the original DSB letter of February 14, 1974, on which Cowin made his selection by placing his initials and an arrow next to the designer Desmond & Lord, contains at the point of the arrow, a dot of different ink than Cowin's initials and arrow.⁴³⁶** She further testified that all dots

* For further details on this award, see chart on Cowin's contract awards, reproduced as A & F Appendix Exhibit #44.

** The February 14, 1974 DSB letter regarding Bristol County Jail is reproduced as A & F Appendix Exhibit #58.

appearing on the DSB letters during Cowin's term were under his initials and arrow (or signature and underlining, when Cowin used these to indicate his decision). This suggests that the dot was already on the DSB letter when Cowin initialed his decision. Cowin privately testified that he had no recollection of anyone contacting him concerning Desmond & Lord or Thissen other than possibly Zabriskie or Dick.^{437*}

4. Masiello & Associates; Springfield Mental Health Center Contract Award

Among the competitors for the 5.5 million dollar Bristol County Jail contract ultimately awarded to Desmond & Lord, as discussed above, was the firm of Masiello & Associates. William Masiello was upset at losing the contract, and launched a campaign to obtain a project of comparable value as a replacement. Masiello eventually decided to focus his efforts on the 4.4 million dollar Springfield Mental Health Center Contract.**

Masiello had learned that he was not going to receive the Bristol County Jail contract from Republican fundraiser Manzi. Masiello asked Manzi whom he should talk to about the contract. Manzi mentioned Victor Zuchero, Executive Director of the Sargent/Dwight Committee. Masiello then arranged an appointment with Zuchero.⁴³⁸

During this first meeting with Zuchero, Masiello expressed his anger about the imminent loss of the Bristol County Jail contract.⁴³⁹ Victor Zuchero, in his private and public testimony, confirmed that Masiello had visited him and abusively complained about not obtaining state work.⁴⁴⁰

* For further information regarding Desmond & Lord see an earlier subsection of this report entitled Peabody Era and a later report entitled Desmond & Lord.

** The following description of the Springfield Mental Health Center contract award is a summary of the Springfield Mental Health Center report.

After Masiello formally learned that he had definitely lost the Bristol County Jail contract he then arranged a second appointment with Zuchero to apologize for his previous behavior and express his interest in the Springfield Mental Health Center project. Masiello testified that during this meeting he told Zuchero he was willing to pay for the Springfield Mental Health Center contract and that Zuchero promised to look into the matter.⁴⁴²

Zuchero's recollections concerning this second meeting have been uninformative and evasive. During interviews and private and public testimony before the Commission, he acknowledged the possibility that he had discussed a state project with Masiello but stated that he had no recollection of doing so.⁴⁴³

Masiello then set out to acquire the DSB votes of James Kerr (the voting representative from the user agency, the Department of Mental Health), of Walter Poittrast (the BBC Director), and of George Rushton (Poittrast's Deputy Director). The separate report on Springfield Mental Health Center describes Masiello's activities and the contradictions in testimony of Masiello and the other three witnesses concerning Masiello's activities and who promised to vote for his firm.

Masiello further testified that after learning on September 25, 1974 (the same day the DSB met), that he had made the DSB list of three finalists, he had a third meeting with Zuchero. At this meeting he informed Zuchero that he was one of the three firms recommended by the DSB, and Zuchero took Masiello over to Lt. Governor Dwight's State House office. Zuchero introduced Masiello to Dwight, then left the two men alone. Masiello offered to "make a sizeable contribution" for the Springfield Mental Health Center project. According to Masiello, Dwight asked for a contribution of \$5000 but the two men eventually agreed upon \$2000 in cash. Masiello talked to Zuchero right after the meeting with Dwight, and informed Zuchero of the agreement made with Dwight.⁴⁴⁴

Zuchero's recollections, or lack thereof, concerning his meeting with Masiello varied during his interviews and testimony before the Commission. In a February 22, 1980 interview, Zuchero stated that he had never discussed contracts with Dwight or anyone working for him. In a February 26, 1980 interview he recalled that he had had meetings with Masiello in late 1974, that he probably sent Masiello over to see Dwight and that Masiello might have said he would make a contribution. In private testimony on March 7, 1980, Zuchero had no recollection of suggesting to Masiello that he meet with Lt. Governor Dwight, or having earlier told the Commission that he had probably sent Masiello to see Dwight. In public testimony on May 7, 1980 Zuchero said that he had no memory of taking Masiello over to Dwight's office, nor any recollection regarding any discussion with Masiello after his alleged meeting with Dwight.⁴⁴⁵

During his private testimony before the Commission Dwight stated that he did not remember Masiello ever coming into his office when he was Lt. Governor and asking him to intercede on his behalf in his application for a state contract.⁴⁴⁶

The DSB sent its letter listing three nominees for the Springfield Mental Health Center project to A & F Commissioner Marchand on September 27, 1974. One of the three firms alphabetically listed was Masiello & Associates. The DSB letter on which Marchand would generally indicate his selection decision by placing his initials next to the name of the chosen firm, does contain the initials "DMM."* However, both Marchand and handwriting expert Elizabeth McCarthy testified before the Commission that these initials were a forgery.⁴⁴⁷ Marchand further testified that he never saw the DSB letter concerning Springfield Mental Health Center and did not award the contract.⁴⁴⁸

Masiello received formal notice of his selection by A & F through an October 14, 1974 letter from the BBC. He testified that between this date and election day, November 5, 1974, he raised the \$2000 cash contribution by issuing four company checks, each for \$500, made out to himself and three employees. The three employees testified that they cashed the checks for Masiello, then gave him the money.⁴⁴⁹ The details of their testimony are summarized below in the separate Springfield Mental Health Center report.

Masiello testified that on election day, 1974, he delivered the \$2000 in cash to Dwight.⁴⁵⁰ Dwight testified at a private hearing that he had no recollection of meeting Masiello, interceding on his behalf, receiving a contribution from him, or participating in any way in the selection process for Springfield Mental Health Center.⁴⁵¹

5. Other Architects

There is much additional evidence, developed by the Special Commission in the course of its investigations, of design contract awards to supporters of the Governor. The following are representative examples.**

*These documents are reproduced as A & F Appendix Exhibit #59. See Springfield Mental Health Center appendix for any other relevant documents.

** For further information on the following contract awards, see charts on Commissioners' contract awards, reproduced as A & F Appendix Exhibit #42, 43, 44 and 45.

Joseph Intingaro Associates

Joseph Intingaro told a staff member of the Special Commission during an interview that between 1960 and 1970 he regularly applied for but did not receive state design contracts. Although no one ever told Intingaro that he must make a political contribution to obtain a contract, he stated that in 1970 he realized that he would never receive any state contracts on merit alone, but that it was necessary to make a political contribution in order to be considered for, or awarded, a state contract. Intingaro contacted Zuchero (although he has no memory of anyone telling him Zuchero was the person to call). He stated that he may have called Zuchero because he knew he was directing the Sargent/Dwight campaign. After contacting Zuchero, Intingaro contributed \$250 on October 26, 1970. On November 18, 1970 Commissioner Shepard awarded Intingaro a contract for renovations at Lowell State College.⁴⁵²

Intingaro continued to contact Zuchero regularly, continued to make contributions and continued to receive design contract awards -- one from each Commissioner of A & F after Shepard. Intingaro believed he contacted Zuchero with a particular project in mind, after filing an application for the project, not after making the DSB finalist list. He stated that he reminded Zuchero that he was a Sargent supporter and mentioned his contributions. Zuchero usually told Intingaro that he would look into the matter. Although neither Zuchero nor anyone else ever contacted Intingaro further, he would subsequently receive a contract.⁴⁵³

Zuchero testified at private and public hearings that Intingaro was an architect who called to tell him he was under consideration for a design contract and to request Zuchero's assistance in obtaining it.⁴⁵⁴ Zuchero called Greene (or Robert Dumont, Greene's successor in March 1973) to indicate that Intingaro was a supporter (i.e., contributor) of Sargent. Greene also testified that someone contacted him concerning Intingaro, but he did not recall who that person was.⁴⁵⁵

Between 1970 and 1974, Intingaro contributed \$850 to the Sargent campaign.* Commissioner Shepard awarded Intingaro a design contract for renovations at Lowell State College on November 18, 1970.⁴⁵⁶ The DSB letter on which Shepard first indicated his selection contains two checkmarks. Commissioner Yasi awarded Intingaro a design contract for a nurses' training center at Lowell State College on April 10, 1972.⁴⁵⁷ The DSB letter on which Yasi first indicated his selection contains a dot next to another firm.

On February 25, 1974, Cowin awarded Intingaro a design contract for renovations at the Massachusetts Hospital School in Canton.⁴⁵⁸ The February 21, 1974 DSB letter on which Cowin first marked his decision contains a dot. There is also what appears to be a slightly erased dot beside another firm on the DSB letter. Cowin in his private testimony before the Special Commission denied that he was advised "from above" concerning the February 25, 1974 award to Joseph Intingaro.⁴⁵⁹ ** ⁴⁶⁰He had no recollection regarding how he made the selection.⁴⁶¹

On September 18, 1974, Commissioner Marchand awarded a design contract for renovations at the Massachusetts College of Art to Intingaro.⁴⁶² Interestingly, Elizabeth McCarthy identified Marchand's apparent initials on the original DSB letter as being of questionable authenticity.⁴⁶³

Bedar and Alpers, Inc.

On August 4, 1971, Commissioner Shepard awarded Bedar & Alpers, Inc., a design contract for renovations at Quinsigamond Community College.⁴⁶⁴ A checkmark appears on the original DSB letter next to this firm's name. Bedar & Alpers also obtained contracts on November 29, 1972 for repairs and alterations to the Superior Court and Commissioner's Building in Essex County, and on February 14, 1974, for the design of the Peabody District Court in Essex County.⁴⁶⁵ Cowin awarded these two contracts. Phineas Alpers and another employee of the firm contributed \$2,100 to the Sargent campaign between 1972 and 1975, \$500 of which preceded the November 29, 1972 award and \$1,000 of which

* Contributions by Joseph Intingaro:

11/26/70	\$250
11/16/73	100
11/04/74	500

(Intingaro's card in the Sargent Committee files is reproduced as A & F Appendix Exhibit #60)

**Cowin by this denial differed with Carl Sapers' (representing MSAA) notes of an interview with Cowin in 1975 indicating that Cowin made one choice on advice from above. He thought that this was an award to Joseph Intingaro.⁴⁶⁰

preceded the February 14, 1974 award. * The November 20, 1972 DSB letter on which Cowin made his decision by placing his initials next to the selected firm contains a dot in different ink than Cowin's signature. The February 7, 1974 DSB letter also contains a dot, but it is difficult to determine whether it was written in pen or pencil.⁴⁶⁶

Victor Zuchero identified Phineas Alpers as a member of the Governor's Club and one of the architects who contacted Zuchero to tell him that his firm was on the DSB list and to ask Zuchero for help. Zuchero believes he assisted Alpers by contacting Harold Greene (or Robert Dumont, Greene's successor in March 1973) to tell him that Alpers was a supporter or contributor of the Governor. He did not recall contacting Lt. Governor Dwight about Alpers.⁴⁶⁷

Universal Engineering

Donald Dwight testified before the Special Commission that he remembered at least one instance, when he was Lieutenant Governor, of Republican fundraiser Albert "Toots" Manzi approaching him on behalf of Universal Engineering after it had been nominated by the DSB for a contract.⁴⁶⁸

The Special Commission questioned Dwight concerning when the conversation with Manzi occurred. Dwight testified that Manzi approached him concerning a particular project but did not recall if it was for Lemuel Shattuck Hospital (a September 25, 1974 contract awarded by Marchand) or an earlier project. Dwight did indicate that Universal Engineering eventually received the contract concerning which Manzi approached him.⁴⁶⁹ It is possible to infer from this that Manzi solicited Dwight's help on one or more of the contracts awarded to Universal Engineering on November 11, 1970, February 20, 1974 and September 25, 1974.

* Contributions of Phineas Alpers and Ruth-Anne Light

06/01/72	\$500
04/12/73	500
06/27/74	500
10/31/74	200
03/11/75	100
03/11/75	100
03/11/75	100
03/25/75	100

(The cards in the Sargent Committee records for Alpers and Light are reproduced as A & F Appendix Exhibit #61.)

The Special Commission questioned Dwight concerning the substance of his conversation with Manzi. Dwight testified that Manzi told him that "Universal is a wonderful firm and any time that they come to your attention I think you should give a recommendation." Concerning the reason for Manzi's interest in the firm, Dwight understood Manzi's interceding on behalf of Universal Engineering to be connected with its political support, whether contributions or services.⁴⁷⁰ According to Dwight, Manzi may have indicated the firm's importance and help to the campaign, but nothing more specific.

Q. Did he indicate to you at that time or at any time the reasons why he was advocating this particular firm?

A. I don't remember any specifics on that. Probably would have said that they are good friends or they will be helpful.

Q. What did you understand that to mean?

A. That they would -- I would understand that to mean that they would have lent political support along the line.

Q. In the form of cash contributions?

A. Could well -- well, in the form of contributions. I don't know whether in cash or any kind of services rendered or what. That would have been my understanding.

Q. That was a fair inference of the conversation that you had with him?

A. That's right, but it would never have been specific.

Q. Specific in terms of what, amounts of money discussed or --

A. That they are big contributors or what have you. He might just say they are important to the campaign or they were helpful or I am creating words for him at this point, but at no time was anything specific said.⁴⁷¹

Dwight stated that he did not remember if he did anything in response to Manzi's request.⁴⁷²

Universal Engineering received three contract awards during the time Dwight was Lieutenant Governor: a November 18, 1970 contract award by Commissioner Shepard for renovations of Northampton State Hospital, a February 20, 1974 contract award by Commissioner Cowin for renovations at Massachusetts Bay Community College and a September 25, 1974 contract award by Commissioner Marchand for safety improvements at Lemuel Shattuck Hospital.⁴⁷³ There is a pencil checkmark on the October 29, 1970 DSB letter and marks on the February 14, 1974 and September 19, 1974 DSB letters.

In light of other evidence concerning Manzi's activities with respect to obtaining commitments from design firms to make payments in exchange for contract awards, it is particularly noteworthy that the Sargent Committee records reflect no contributions by Universal Engineering or by its principal, David Nassif, who was identified earlier in this report as a substantial contributor during the Peabody era.

Whitman & Howard, Inc.

On February 14, 1974, Cowin awarded a contract for the Essex County First District Courthouse in Salem to Whitman & Howard.⁴⁷⁴ Members of this firm had contributed \$1,300 to the Sargent campaign in 1969 and 1970.* The February 7, 1974 DSB letter on which Cowin made his decision contains a pencil dot under Cowin's ink arrow next to the name Whitman & Howard, Inc.

Owen F. Hackett & Associates

On February 19, 1974, Cowin awarded a contract for renovations and additions to the Second District Courthouse in Fall River, Bristol County, to Owen Hackett & Associates.⁴⁷⁵ Owen Hackett made political contributions totalling \$400 between 1970 and 1973.** The February 14, 1974 DSB letter on which Cowin made his decision contains a dot of different ink than Cowin's arrow or initials.⁴⁷⁶

Hellman, Kempton & Sigl

On February 25, 1974 Cowin awarded a contract to Hellman, Kempton & Sigl for renovations of certain buildings at the Paul Dever State School.⁴⁷⁷ Between 1966 and 1974 John Hellman contributed \$2360 to the Republican party,

* Contributions by Edwin Howard, Paul Howard and Roger Pearson:

12/02/69	\$100
12/02/69	200
04/21/70	500
08/18/70	500

(These contributors' cards in the Sargent Committee files are reproduced as A & F Appendix Exhibit #62)

**Contributions made by Owen Hackett:

08/22/79	\$100
10/14/71	100
07/16/73	100
11/20/73	100

(Hackett's card in the Sargent Committee files is reproduced as A & F Appendix Exhibit #63.)

\$1860 of which preceded the February 25, 1974 award.* Cowin, during his private testimony, admitted that he chose Hellman for this particular contract because he knew him and was aware of his active involvement in Republican affairs. He had no specific recollection of Hellman contacting him regarding the contract, but stated that he would not be surprised to learn that he had.⁴⁷⁰ The February 21, 1974 DSB letter on which Cowin made his decision contains a pencil dot next to the Hellman firm's name, whereas Cowin's initials and arrow are in ink.

C. A. Crowley Engineering, Inc.

On March 4, 1974 Cowin awarded a contract for lighting and walkways at Southeastern Massachusetts University to C. A. Crowley Engineering, Inc.⁴⁷⁹ Between 1972 and 1974 Charles Crowley, Jr. contributed \$1500 to the Sargent Committee, \$1000 of which preceded the March 4, 1974 award.** The February 28, 1974 DSB letter on which Cowin made his decision contains a dot written in different ink than Cowin's arrow or initials.

Martin J. Cullity

Commissioner Shepard awarded Martin J. Cullity a power plant/utility distribution system design contract at Bridgewater State College on November 18, 1970.⁴⁸⁰ Cullity also received three contract awards for demolition, renovation and repair work at the Lyman School for Boys.⁴⁸¹ Commissioner Yasi awarded two of these contracts on May 12, 1972, and Commissioner Cowin awarded one on February 25, 1974. Martin Cullity contributed \$1300 between 1970 and

* Contributions by John Hellman:

10/20/66	\$ 10
09/27/67	100
10/07/68	500
12/02/68	1000
05/02/70	50
01/02/70	200
09/23/74	500

(Hellman's card in the Sargent Committee files is reproduced as A & F Appendix Exhibit #64.)

See Peabody Era, supra, for Hellman's involvement in fundraising activities during the Peabody era.

**Contributions by Charles Crowley, Jr.:

06/29/72	\$500
04/25/73	500
06/06/74	500

(Crowley's card in the Sargent Committee files is reproduced as A & F Appendix Exhibit #65.)

1974, \$700 of which preceded the February 25, 1974 award.* The October 29, 1970 DSB letter which Shepard initialed to make his selection contains a checkmark. The May 31, 1972 and February 21, 1974 DSB letters on which Yasi and Cowin made their selections contain pencil dots next to the Cullity name.

Northern Associates, Inc.

Northern Associates, Inc. received a contract award on November 18, 1970 from Commissioner Shepard.⁴⁸² On September 29, 1970, April 29, 1970 and October 20, 1970, a member of this firm contributed a total of \$1200 to the Sargent Committee.** The DSB letter which Shepard initialed when he made his decision contains a pencil checkmark next to Northern Associates, Inc.

Schoenfeld Associates, Inc.

Schoenfeld Associates, Inc. received a contract award on November 18, 1970 from Commissioner Shepard.⁴⁸³ On May 12, 1970, a principal of the firm had contributed \$500 to the Sargent Committee.*** The DSB letter contains a pencil checkmark next to Schoenfeld Associates, Inc.

Bayside Engineering Associates

This firm received design contract awards on November 19, 1970 from Commissioner Shepard and on May 2, 1972 from Commissioner Yasi.⁴⁸⁴ On December 2, 1969 and April 21, 1970, a member of the firm had contributed a total of \$700 to the Sargent Committee.**** The 1970 DSB letter contains a pencil checkmark; the 1972 DSB letter contains an ink dot.

Edwards & Kelcey, Inc.

Edwards & Kelcey received a contract award on April 16, 1971 from Commissioner Shepard.⁴⁸⁵ On December 2, 1969 and September 30, 1970, members of the firm had contributed a total of \$1000 to the Sargent Committee.*¹ The DSB letter contains an ink dot next to Edwards & Kelcey, Inc.

* Contributions by Martin Cullity:

08/12/70	\$200
01/27/72	500
09/27/74	500
11/01/74	100

(Cullity's card in the Sargent Committee files is reproduced as A & F Appendix Exhibit #66.)

** The Sargent Committee file card is reproduced as A & F Appendix Exhibit #67.

*** The Sargent Committee file card is reproduced as A & F Appendix Exhibit #68.

**** The Sargent Committee file card is reproduced as A & F Appendix Exhibit #69.

*¹ The Sargent Committee file card is reproduced as A & F Appendix Exhibit #70.

D. COMMISSIONERS OF A & F

Despite the substantial evidence that political considerations affected many contract awards, and that Manzi, Zuchero and Dwight had input into designer selection, all four Commissioners of A & F from Shepard through Marchand uniformly denied that they directly or indirectly received communications concerning contract awards from Dwight, Manzi or Zuchero. Instead, their testimony was that they relied on random selection, or their judgment based upon the limited information available to them, to make their decision. This testimony, if believed, would mean that the selection of designers with dots or checkmarks next to their names, the selection of designers who had contacted Zuchero, Manzi or Dwight requesting these men to "put in a good word for them," the selection of designers who had a history of political contributions, and the failure to select designers politically inactive, were simply a series of coincidences.

The following is a summary of the testimony of each of the four Commissioners concerning designer selection.

1. Charles Shepard (August 12, 1970 - September 30, 1971)

Charles Shepard had been First Deputy Commissioner of A & F when Dwight was Commissioner.*⁴⁸⁶ When Dwight was planning to resign as Commissioner of A & F in order to run for Lieutenant Governor, he discussed Shepard's becoming Commissioner with Governor Sargent. Shepard was the candidate whom Dwight recommended for the position.⁴⁸⁷ He was chosen and served as Commissioner of A & F from August 1970 through September 1971.⁴⁸⁸

Shepard testified at private and public hearings that his participation in the designer selection process began with meetings with Zabriskie. Shepard first saw the DSB letters when Zabriskie brought them to their meeting. At one point Shepard stated that he listened to Zabriskie's report of the DSB meeting; at another he merely said Zabriskie expressed a preference but didn't tell him with whom he had talked to arrive at the recommendation.⁴⁸⁹

Shepard testified that he had no knowledge of Zabriskie conferring with Dwight, and that Zabriskie never told him that he was consulting with Dwight or that a particular firm was the preferred choice of Dwight.⁴⁹⁰ Shepard stated

* Commissioner DeFalco had appointed Shepard to the First Deputy position on September 30, 1968. Commissioner McCarthy had previously appointed him Deputy Commissioner, Fiscal Affairs. In this role Shepard was present at the U. Mass Medical School deliberations during the Volpe administration. 486

that he had no knowledge of Dwight playing a role in the selection process, and also denied consulting with Manzi or Zuchero.⁴⁹¹ Shepard testified that he knew which firm was the DSB's first choice, although he did not have any direct communications with the DSB concerning the ranking.⁴⁹² He suggested that Zabriskie communicated the information.⁴⁹³ Under questioning, however, Shepard admitted that Zabriskie expressed a preference but stated that Zabriskie did not indicate its source as the DSB.⁴⁹⁴

Whatever the source of Zabriskie's recommendations, Shepard took them into account. He did not spend a great deal of time gathering information on the firms.⁴⁹⁵ Like many other Commissioners, Shepard assumed that all three firms were qualified.⁴⁹⁶ He did not consider the firm's past work and performance.⁴⁹⁷ According to Shepard, he made a "random" decision based on Zabriskie's recommendation.⁴⁹⁸ He does not recall following Zabriskie's recommendation in all 27 contracts awarded during his term.⁴⁹⁹

The Special Commission obtained the original DSB letters on which Shepard indicated his selection decision. These letters contain Shepard's initials and checkmarks in pencil and ink. Shepard remembers no pencil marks on the letters when he first saw them.⁵⁰⁰ To explain the existence of the checkmarks, Shepard stated that he may have made them in order to indicate his selection.⁵⁰¹ His account is that he used the checkmarks because his staff advised him that it was the custom of previous Commissioners to indicate their selection decision with an ink checkmark. Shepard posited that he made a tentative preliminary decision by writing checkmarks in pencil, then went over the pencil with ink when he made his final decision. Although Shepard stated he was following a previously established practice, an examination of the DSB letters acted upon by Dwight during his term as Commissioner reveals no such marks. Dwight when Commissioner merely initialed his selections.⁵⁰²

Zabriskie, in his private and public testimony before the Special Commission, agreed with Shepard's testimony that they discussed the DSB letters. However, Zabriskie stated that their discussions followed his meetings with Dwight and that Shepard knew of these meetings. In contradiction to Shepard's testimony, Zabriskie stated that he told Shepard that Dwight had expressed to Zabriskie his desire to continue contributing input in the designer selection process.⁵⁰³

According to Zabriskie, Shepard during his term as Commissioner consulted with Zabriskie knowing the source of Zabriskie's recommendations. Zabriskie testified that after he met with Dwight to show him the DSB letters, he delivered them to Shepard with checkmarks next to the names of certain firms. Zabriskie informed Shepard that the marks indicated Dwight's recommendations.⁵⁰⁴

Moreover, Dwight himself contradicts Shepard's testimony, stating that he made recommendations to Shepard for the selection of certain designers. Although Dwight did not specifically remember what discussions he and Shepard had regarding Dwight's continuing role, nor which man initiated the practice of Dwight contributing input, Dwight did testify that Shepard "on occasion and maybe regularly sought my recommendations on the selection." He further stated that Shepard consulted him in the majority of the selections and that Shepard followed most of his recommendations. Dwight testified that when consulted, he considered the same factors he had when Commissioner himself. He stated that although he was aware of the political contributions of some firms under consideration, this awareness did not play a role in his recommendations.⁵⁰⁵

As a result of the selection process, design contracts were awarded to many of the designers discussed earlier in this report, including Joseph Intingaro, Martin Cullity, Northern Associates, Bayside Engineering Associates, Edwards & Kelcey, Universal Engineering, Schoenfeld Associates and Bedar & Alpers.

2. Robert Yasi (October 1, 1971 - November 13, 1972)

Robert Yasi became Commissioner of A & F on October 1, 1971.⁵⁰⁶ The reason for Shepard's removal is unclear but Sargent stated in a transcribed interview that Yasi was a friend of his and wanted the job.⁵⁰⁷ Dwight was again involved in hiring discussions and during his private testimony agreed with Sargent that Yasi was hired after expressing his interest in the position.⁵⁰⁸ Dwight stated, however, that he would have preferred Shepard continue in the position.⁵⁰⁹ Sargent has no recollection concerning Dwight's opinion about replacing Shepard with Yasi.⁵¹⁰ Yasi publicly testified that he actively sought the position only after the administration decided to make a change and only after the Governor expressed the desire to hire him.⁵¹¹

As already described, Yasi, prior to his appointment as Commissioner of A & F, had been Governor Sargent's Chief Secretary since early 1969.⁵¹² As Chief Secretary, he was a member of the Governor's cabinet, as were Zabriskie and Lieutenant Governor Dwight.⁵¹³ He had been instrumental in the hiring of Harold Greene⁵¹⁴ and Victor Zuchero.⁵¹⁵ He had served as Governor Sargent's Campaign Manager during the 1970 campaign. And Sargent described a prior close relationship between Yasi and Zabriskie, stemming from their working together at the Department of Natural Resources.⁵¹⁶

Dwight, while admitting that he continued to have some input into designer selection matters, testified that he was less involved in such matters during Yasi's and subsequent Commissioners' terms. He stated that his conversations

with Commissioners after Shepard were not on a regular basis, although he may have occasionally discussed individual contracts with them. He did not recall talking to Zabriskie concerning designer selection matters during Yasi's term as Commissioner. He had no recollection of anyone asking his opinion, or of his interceding or making a recommendation. He believes that he less often received the DSB letters or participated in the selection process. He may have continued to receive them and participate, but without the former regularity. He has admitted that he continued to be interested in the subject of design contract awards.⁵¹⁷

Commissioner Yasi privately and publicly testified that Lieutenant Governor Dwight never consulted him concerning the selection of particular architects for particular projects. Yasi has no recollection of Manzi or Zuchero contacting him concerning designer selection matters. He only remembers one instance of Harold Greene contacting him. According to Yasi, Greene may have contacted him more than once, but not regularly.⁵¹⁸ Yasi's disavowal of discussions with Dwight, Manzi, Zuchero and Greene (for the most part) leave Zabriskie as the person with whom Yasi discussed designer selection matters.

At Yasi's request, Zabriskie retained the position of Deputy Commissioner for Central Services.⁵¹⁹ Zabriskie continued to attend DSB meetings and served as the DSB's Executive Secretary.⁵²⁰ Zabriskie publicly testified that he informed Yasi, soon after he became Commissioner, of his meetings with Dwight concerning the award of design contracts. Zabriskie explained to Yasi that Dwight had instituted the system because he wanted to continue his participation in the selection process, although no longer Commissioner of A & F. According to Zabriskie, Yasi was upset and resentful over this information, but did not instruct him to stop meeting with Dwight.⁵²¹

Yasi has described the process by which he, when Commissioner of A & F, selected design firms. He first saw the DSB letters when he met with Zabriskie and Dick to discuss contract awards. The letters had been delivered directly to Zabriskie or Dick. Yasi does not recall Zabriskie bringing an informal DSB priority ranking or other material to the meeting.*⁵²² Yasi, Zabriskie and Dick then briefly discussed the three DSB recommendations listed alphabetically in the transmittal letter. Zabriskie and Dick had already usually reached a recommendation of a particular firm for a particular contract. With a few exceptions, Yasi selected their recommendations. Yasi had an understanding with Zabriskie that Yasi's selection would be based on Zabriskie's recommendation unless it differed from the engineering advice which Dick provided.

* Littleton does not recall whether he sent the priority ranking to Yasi.⁵²²

Occasionally, Dick's input meant that Zabriskie's first recommendation was not followed, but the three men eventually reached a unanimous decision. For the most part, however, Yasi relied on Zabriskie's recommendations. According to Yasi, it was Zabriskie's practice to recommend a specific firm for selection.⁵²³

Zabriskie privately and publicly testified that he met with Lieutenant Governor Dwight as a regular practice while Yasi was Commissioner. Zabriskie, after receiving the DSB letters, would take them to the Lieutenant Governor, who indicated his preference by placing dots next to the firms' names. Zabriskie, and on some occasions A & F engineer Philip Dick,^{*524} then met with Commissioner Yasi, at which time they showed him the DSB letters with Dwight's markings. Zabriskie and Dick did not make any recommendations other than the ones indicated by Dwight's marks. If Zabriskie communicated specific recommendations to Commissioner Yasi, he informed him that Dwight was the source of the recommendations. Zabriskie made no independent recommendations. Zabriskie has stated that although he did not explicitly recommend the firm which Dwight had marked, he had told Yasi that the marks indicated the Lieutenant Governor's choice. Zabriskie is certain that he told Yasi that the marks on the DSB letters were placed there by Dwight and reflected his preference for contract awards.⁵²⁵

Although Yasi did not recall Zabriskie informing him of Dwight's preference, or how the dots got on the original DSB letters which he initialed, he stated that he would accept Zabriskie's account of how design contracts were awarded:

Q. In the course of your dealing with Mr. Zabriskie, did you form an opinion as to his character?

A. I'd say around 1958 I met Al Zabriskie, I believe, deputy or assistant chairman of the House Ways and Means Committee. I was a member of the Legislature. He was very interested in conservation work, and it was my job for Commissioner Foster, for the then Department of Natural Resources, to carry all of the legislative programs for the Department. It happened to be in that period of about three, four, five, six years when that Department moved from merely nothing to a very visible department in this government, and he literally became champion of many, many of our programs. I obviously became friends with him, and I respected him from then until now. I haven't seen him, and I respected him from then until now. I haven't seen him in maybe two to three years since the beginning of

* Yasi had hired Philip Dick as an engineer for A & F, Central Services. The two men had personally known each other for a long time. Dick has testified that Yasi, while still Chief Secretary to Governor Sargent, suggested that he apply for a position with the Governor's newly formed cabinet. When Yasi became Commissioner, he again recommended that Dick apply for a state job. Dick came for an interview, after which Yasi offered him the engineer position. Dick accepted. He reported to Zabriskie, as long as Zabriskie held the position of Deputy Commissioner for Central Services (through December 1974). The two men saw each other daily and worked closely together. Dick's responsibilities included preparing the capital outlay program and participating in designer selection activities. He had previously worked for both Desmond & Lord and MBM.⁵²⁴

this thing. I used to see him before that. I think he's probably one of the highest people of character, one of them, that I ever met in my life.

- Q. Sir, on the basis of your opinion of Mr. Zabriskie, would you believe whatever Mr. Zabriskie had to say with respect to what had happened concerning the selection of designers for the award of design contracts?
- A. Yes. Just one caveat. If Al was sitting right here now, I take it that he is not, and that is as you well know, Mr. McCarthy, I have had a bit of difficulty with my own memory. I think Albert is a little bit older than I am; he may have some difficulty with his. Other than that, if he says he has a very vivid or direct memory, he doesn't have to say that to me under oath or under the threat of perjury, I believe him.
- Q. Sir, did Mr. Zabriskie ever tell you during the time that you were Commissioner of Administration and Finance or at any time thereafter that he was consulting with individuals outside the Department of Administration and Finance with respect to the award of design contracts?
- A. I think if you said it that way, I would have to say I don't have any memory of that; but if I can just change it a little bit, please, with your permission, I have recollections of Al, Al Zabriskie, saying to me so and so called, so and so called, to say that occurred when we sat down, I cannot. I think not. But, I don't know. I will say that I now feel that I knew then that he was under tremendous pressure, and a part of that reason was my own allowance of it. I have no doubt he was under fantastic pressure, not just in this area either, but I am sure in this area, too.
- Q. Sir ---
- A. I am sorry, I meant by pressure, people calling, contacting him.
- Q. Sir, from your understanding of Mr. Zabriskie's position, would it surprise you if he consulted with Donald Dwight concerning the selection of designers for the award of contracts.
- A. No, sir, it would not. Having in mind, may I, that I realize others sat down, I think one different person that I said in an answer to a similar question, but no, I think specifically the same -- that I would be surprised that a pattern of review by a group on every individual contract, you know, I still would be that. But, I am not, would not at all be surprised if he was consulted or consulting with Donald Dwight.
- Q. And with the exception of the one or two incidences where you recall that Mr. Dick had a different opinion, did you invariably select the firm recommended by Mr. Zabriskie?
- A. I hope to make it crystal clear, other than you said one or two, maybe as many as four or five; maybe it was only one, but I give it up to five, that was the sole basis for awarding the contract, other than the engineering aspect by Phil Dick.
- Q. Sir, we have shown you the originals of the documents from the files of Administration and Finance concerning the selections made by you as Commissioner. Is that correct?
- A. It is correct. Twice, I think.
- Q. Sir, in reviewing those documents have you seen on a number of incidences that there are dots that can be picked out by the human eye?
- A. Yes, I have.

- Q. Sir, were those dots on the sheets listing the firms nominated by the Designer Selection Board at the time they were brought to you by Mr. Zabriskie?
- A. I do not know. I thought, as I have told you and the Commissioners before, I think I can state it as a fact. But, I will say it again, I thought -- even as I say it now, I can't say I thought I did all of them. But, I pictured myself, and I think I gave you an example, doing one without going into detail. However, again, I said if Albert Zabriskie says no, only he did it, that we walked in with them, they were on there, I would positively believe him.
- Q. Sir, do you have any reason why you would have placed dots next to the names of firms on the list?
- A. As I told you before, no, unless he told me to.
- Q. Is it possible that the dots may have been used by Mr. Zabriskie as the indication of the firm being recommended?
- A. Definitely. Definitely.
- Q. Would you agree that's possible?
- A. Absolutely agree that's possible.⁵²⁶

Handwriting expert Elizabeth McCarthy has testified that forty-one out of the forty-six contract awards by Yasi have discernible marks next to the name of the selected firm on the original DSB letter.^{527*} The firms to which Yasi awarded contracts include many of those discussed in prior portions of this section of the report,** including Joseph Intingaro, Bayside Engineering Associates, Samuel Ussia & Associates, Martin Cullity, Abraham Woolf & Associates, Healy & Healy Architectural Associates, E.J. Flynn Associates, Tallman, Drake & Guay, John Carr Associates and R. Scott Quinlan. The copy of the July 26, 1972 DSB minutes containing entries such as "Toots," "Vic," and "D.D." listed contracts which Yasi awarded as Commissioner.

3. William Cowin (November 14, 1972 - May 8, 1974)

Governor Sargent appointed William Cowin as the Commissioner of A & F effective November 14, 1972.⁵²⁸ Cowin had held several other positions in the Sargent administration since May 1969.⁵²⁹ Cowin and Sargent had worked together during these years.

Sargent testified before the Special Commission that he did not remember Lieutenant Governor Dwight participating in the hiring of Cowin, but presumed that they discussed the matter and that Dwight was favorable.⁵³⁰ Dwight has testified that he was involved in the decision-making process concerning the hiring of Cowin.⁵³¹

Cowin awarded thirty contracts to designers during his term as A & F

* See chart concerning discernible marks on DSB letters during Yasi's term, previously reproduced as A & F Appendix Exhibit #36.

** See Architects; Harold Greene Memorandum, and Other Architects, supra.

Commissioner. Cowin testified privately and publicly that he first became aware of a specific application and contract when Zabriskie and Dick brought the DSB letter to him at the same time as the men met to discuss the selection, or when Zabriskie and Dick sent it to him prior to the meeting.⁵³²

Cowin testified that he, Zabriskie and Dick had a brief, informal meeting together to discuss the selection of one of the firms on the DSB letter.⁵³³ Neither at that time nor earlier did Cowin receive written information from Zabriskie and Dick other than the DSB letter.^{534*,535,536} Cowin asked Zabriskie and Dick questions concerning the firms on the DSB letter, knowing that one or both of them had attended the DSB meetings where the projects and firms had been discussed.⁵³⁷ Cowin testified that Zabriskie and Dick reluctantly provided him with a minimal amount of information.⁵³⁸ He tended to question them less with time because of the difficulty in eliciting information from them.⁵³⁹ According to Cowin, he made the selection decision during the meeting.^{540**,541} To indicate his decision, Cowin placed either his signature or initials on the DSB letter next to the name of the selected firm.⁵⁴² He also either underlined the name of the selected firm or placed an arrow next to it.***

Cowin testified that he had no knowledge of any contacts by various political figures with him, Zabriskie or Dick and that no one other than Zabriskie and Dick communicated with him concerning the selection of design firms for specific projects. Cowin stated that Governor Sargent, Lieutenant Governor Dwight, Patronage Secretary Harold Greene and fundraiser Victor Zuchero and Albert Manzi never contacted him.⁵⁴³ Cowin recalled only one representative from an architectural firm contacting him concerning contract awards.***⁵⁴⁴

Cowin further testified that there were not dots on the DSB letters when Zabriskie and Dick brought them to him. Cowin agreed that the majority of the

* Cowin recalled asking the DSB (through Zabriskie, rather than directly) for a ranked listing.⁵³⁵ According to Cowin, the DSB (also communicating through Zabriskie) refused to provide this on the grounds that recommending three firms without ranking them fulfilled their mandate. Compare Littleton's testimony that he did not have meeting with Cowin to discuss the form in which the DSB recommendations would be submitted to him. Littleton was certain that he submitted an alphabetical listing to Cowin. He stated that he possibly also submitted a priority ranking on a detached slip to Cowin.⁵³⁶

** Compare Zabriskie's testimony that Cowin made the decision later.⁵⁴¹

*** Cowin's signature and underlining appear on the earliest DSB letters (11/20/72). He used initials and an arrow on later letters (3/30/72, 2/7/74, 2/14/74, 2/28/74). Note that it was Zabriskie, as Executive Secretary of the DSB, who wrote the 2/7/74, 2/14/74 and 2/28/74 letters to Cowin.

**** According to Cowin, William Masiello of Masiello & Associates contacted him in 1974 concerning Worcester Courthouse in Gardner.⁵⁴⁴

DSB letters now contain dots, but did not recall placing the dots on the DSB letters himself nor know how they got there.⁵⁴⁵ Although the dots appear next to the majority of the firms awarded contracts, Cowin testified that he thought it unlikely that anybody put the dots on the DSB letter for the purpose of making selections.⁵⁴⁶

Cowin's testimony concerning input by others into designer selection and concerning the presence of dots on the original DSB letters is inconsistent with the testimony of Dwight and Zabriskie, is inconsistent with the pattern of contract awards by him as Commissioner, and is inconsistent with the finding of document analyst Elizabeth McCarthy. McCarthy testified that there are discernible marks next to the names of twenty-nine of thirty designer selected by Cowin. She determined that the dots were written in a different ink or pencil than that which Cowin used to sign his name or initials and concluded that the marks were under Cowin's signature, initials or arrow, thus indicating that they were put there prior to his making the selection.⁵⁴⁷

Although Dwight testified that he was less involved in designer selection matters during the terms of Commissioners subsequent to Shepard, he did recall making recommendations in later years, but not as a regular procedure. Dwight did not specifically recall anyone consulting him concerning designer selection matters, his participating in the decision, or interceding on behalf of a firm during Cowin's term, but stated that he "could well have" and that it was probable.⁵⁴⁸

Although Dwight did not recall anyone contacting him concerning designer selection matters during Cowin's term, Zabriskie privately and publicly testified that he continued to meet with Dwight when Cowin was Commissioner. Dwight continued to indicate his recommendations by marks on the DSB letters. Zabriskie told the Commission that he informed Cowin of the practice of consulting with Dwight and of Dwight's use of marks to indicate his recommendations.⁵⁴⁹

Many of the firms to which Commissioner Cowin awarded design contracts had made political contributions and contacted political figures. These contacts, contributions and firms have been discussed in a prior part of this report,* and include firms such as Owen Hackett & Associates, Bedar and Alpers, Tallman, Drake & Guay, Whitman & Howard, Desmond & Lord, Universal Engineering, Hellman, Kempton & Sigl, Joseph Intingaro Associates, and C. A. Crowley Engineering, Inc. All of these firms have dots next to their names on the original DSB selection letters.

* See section entitled Architects, supra.

4. David Marchand (May 9, 1974 - December 31, 1974)

William Cowin resigned as Commissioner of A & F in May 1974 in order to seek the nomination of the Republican Party for Attorney General of Massachusetts.⁵⁵⁰ Governor Sargent appointed David Marchand to succeed Cowin as Commissioner of A & F.⁵⁵¹ Prior to becoming Commissioner on May 9, 1974, Marchand had served as Lieutenant Governor Dwight's Chief Secretary and Counsel since January 1971.⁵⁵² And before obtaining the position of Chief Secretary and Counsel, Marchand had worked at A & F as the Assistant to the Commissioner since 1969, having been first hired for the position by Commissioner Dwight and also serving under Commissioner Shepard.⁵⁵³

Marchand, Cowin and Dwight testified before the Special Commission that it was Lieutenant Governor Dwight who recommended Marchand for the position of A & F Commissioner. Dwight testified that he was a "strong advocate" of Marchand's appointment.⁵⁵⁴ Marchand testified that Dwight strongly supported his candidacy.⁵⁵⁵ Sargent, during an interview with the Special Commission, recalled that Dwight endorsed Marchand.⁵⁵⁶

Marchand testified that he selected firms for design contract awards through a random selection method:⁵⁵⁷

- Q. And how did you go about deciding which firms to award contracts to?
- A. I would receive in a folder a number of - formally - a number of Designer Selection Board selections listing three names, each of various projects in alphabetical order. When I received this folder, I selected the first one from the top of the pile, second one from the second and the third from the third, and so on, except when I was aware that a given firm had received work recently or substantial work in the recent past, in which case I would skip to the next name.
- Q. Sir, you mentioned earlier that your practice would be to take - you had a group of let's say four contracts that were being transmitted to you with the lists of names from the Designer Selection Board, that you would go through each of them and if I am correct in understanding you, that in the instance of the first contract, pick the first name on the list and then the second and then the third, is that correct?
- A. Yes. I would open the folder and absent suggestions about recent work for the first firm, I would initial number one name on the first list, and then turn it and do the second one on the second page. I didn't do them all.

* * *

- Q. Now, sir, did you have any regular pattern or practice with respect to the award of these contracts?
- A. My best memory is that I would pick the first one on the first list -- they usually came in batches, in groups of varying sizes, and unless I was told or I remembered that someone had -- the number one firm had been named recently and received an award, that was a consideration I would give that someone else should get the next one; but, other than those considerations, none.⁵⁵⁸

Marchand's testimony concerning random selection does not withstand close scrutiny, as even Marchand was forced to concede under questioning about his June 28, 1974 award of a contract to the firm of Marvin Goody & John Clancy Associates:

- Q. Now, sir, how did you come to select the firm listed on Special Commission Exhibit 2, Marvin Goodoak [Goody] and John Lamphrey [Clancy] Associates?
- A. I have no specific recollection. If it were one of several that came in at the same time and was the second one I looked at.
- Q. It is the second one on that list, but it is the only one in the files, files of the Department of Administration and Finance, which was selected at that time. How would you explain selecting the firm as the number two on the list?
- A. I cannot.
- Q. Under what you have told us earlier, had you applied that system, would you have selected the firm of Cambridge Seven Associates?
- A. I think I would have, yes.
- Q. So, it appears that the practice you described was not applied in this particular case?
- A. That's correct.
- Q. And if it were not applied, then how did you go about selecting firms when you awarded this particular contract?
- A. I have no explanation.⁵⁵⁹

Nor does the pattern of contract awards by Marchand appear to be consistent with random selection.* For example, on September 18, 1974 Marchand awarded six contracts. Three of these, or half, were given to firms in the third position on the DSB letter. The firms which recieved contracts and their position on the DSB letters are: Pierce, Pierce & Kramer (3); Richmond-Paley Associates (4); John Milo Associates (2); Harry Gulesian & Associates (1); Wallace, Floyd, Ellenzwaig (3); and Joseph Intingaro (3).⁵⁶¹

Further reason for concern about Marchand's contract awards is the apparent forgeries of Marchand's initials on the DSB letters where it was his custom to initial his selection. Handwriting expert Elizabeth McCarthy was unsure of the genuineness of Marchand's initials next to the firms: Gulesian & Associates; Wallace, Floyd, Ellenzwaig; and Joseph Intingaro.⁵⁶² She thought that the initials next to John Milo Associates were probably genuine. Marchand also testified before the Special Commission that he doubted that the initials next to Harry Gulesian and Joseph Intingaro were his handwriting.⁵⁶³ He stated that he had no recollection of selecting Joseph Intingaro & Assoicates and never saw the DSB letter.⁵⁶⁴ Marchand was also uncertain that the initials next to John Milo Associates were his handwriting.⁵⁶⁵

* For chart on Marchand contract awards see A & F Appendix Exhibit #45.

Marchand and Elizabeth McCarthy both agree that Marchand's initials were forged on the DSB letter concerning the Springfield Mental Health Center contract, which was awarded to the firm of Masiello & Associates.^{566*} This was the largest single contract awarded during Marchand's term as A & F Commissioner.

Marchand denied giving any consideration in contract awards to political supporters of the Sargent administration:

MR. WEINSTEIN: You are telling this Commission today that at no time was any consideration being given especially to those that had "helped the administration" or were "friends" to the administration?

THE WITNESS: For Designer Selection Board selections made by me, that is precisely correct. Yes.⁵⁶⁷

He also denied discussing the award of design contracts with Republican fundraiser Albert Manzi⁵⁶⁸ or Robert Dumont, the successor to Patronage Secretary Harold Greene.⁵⁶⁹ When the Special Commission asked Marchand whether fundraiser Victor Zuchero ever communicated with him directly or indirectly concerning the selection of a firm for a contract, Marchand first firmly stated that Zuchero did not so communicate with him.⁵⁷⁰ Marchand did subsequently testify, however, that Zuchero on one occasion gave him a list of five or more firms and indicated that they had been helpful to the Governor and his administration.⁵⁷¹ Marchand said that Zuchero did not specifically indicate what he wanted Marchand to do with the information. Marchand also remembered an occasion, possibly the same call, when he, Marchand, read Zuchero a DSB list of three finalists.⁵⁷² Zuchero indicated that the firms were all friends of the Sargent administration. Marchand did not recall which contract this concerned.

Marchand also testified that he did not consult with Dwight concerning designer selection matters.⁵⁷³ Dwight's testimony about whether he consulted with Marchand concerning design contract records is equivocal. Dwight said he lacked specific recollection of consulting Marchand, but "could well have."⁵⁷⁴ Dwight did testify, after previously describing Shepard's term as the period of his greatest input, that "... it is possible that with Marchand as Commissioner I had more input or might have been asked more than I would have with either Bill Cowin or Bob Yasi."⁵⁷⁵

* See Springfield Mental Health Center report, and summary of same, supra.

Marchand's testimony concerning his knowledge of Dwight's role and the marks on the DSB letters conflict with Zabriskie's testimony. Marchand not only denied that he himself consulted with Dwight concerning designer selection matters,⁵⁷⁶ but also stated that he had no knowledge of anyone else from A & F meeting with Dwight.⁵⁷⁷ However, Zabriskie, who was Deputy Commissioner of Central Services at A & F, testified that he informed Marchand shortly after Marchand received the DSB letter that Dwight communicated his recommendations to Zabriskie.⁵⁷⁸ Zabriskie stated that he told Marchand that Dwight had input into the selection process by making marks on the DSB letters to express his suggestions.

Marchand and Zabriskie agree that they did not discuss the design firm finalists when Zabriskie brought the original DSB letters.⁵⁷⁹ However, whereas Marchand testified that he sometimes made his decision while Zabriskie waited⁵⁸⁰ and that Zabriskie usually prepared the transmittal letter,⁵⁸¹ Zabriskie testified that Marchand did not make the selection decision in his presence⁵⁸² and that he only learned of Marchand's decision when he received a copy of the transmittal letter.⁵⁸³

Marchand testified that he did not notice any dots on the DSB letters when he received them or subsequently. He did not know how the marks, which now appear on the DSB letters obtained by the Special Commission, got there. Marchand stated that he did not make the marks.⁵⁸⁴ However, handwriting expert Elizabeth McCarthy testified before the Special Commission that next to the names of the 24 designers to whom Marchand awarded contracts there were discernible marks on the DSB letters (on which Marchand first indicated his decision by placing his initials next to the name of the selected firm) in 21 cases. She testified that in no case did she find the mark over Marchand's initials.⁵⁸⁵ It must also be noted that there were frequently dots next to more than one firm on the original DSB letters. This occurred in at least six of the 21 times in which dots appear next to the selected firm.

A review of Marchand's contract awards indicates that many firms concerning which there is evidence of political contributions or of intervention by Manzi, Dwight or Zuchero were awarded design contracts by Marchand. These firms include Universal Engineering, Joseph Intingaro, John Carr Associates, E.J. Flynn Engineering, and Samuel Ussia Associates.

CONCLUSION

The evidence before the Commission concerning the award of design contracts demonstrates that the unrestricted discretion given the Secretary of A & F to award design contracts to any firm on the DSB list of finalists was abused, and that political contributions were a significant factor in prompting this abuse. For these reasons the Commission has recommended that the Secretary of A & F be required to select the firm ranked first by the DSB, unless good reason in writing is given for an alternate choice. This was adopted by the General Court. To minimize the possibility of manipulation of the DSB, the Commission has also submitted legislation, now enacted, which removes the BBC Director and user agency representative from DSB membership, and gives the DSB the resources with which to make informed and considered recommendations.

The Commission has further proposed that the State's campaign finance laws be reformed to reduce the maximum limit for private contributions from \$1,000 to \$500 (except for statewide offices) and to extend this limit to special interest groups; to include improved enforcement of campaign finance laws; and to provide for a workable system for public financing of campaigns for statewide and legislative office. These reforms are essential if the pervasive cause for favoritism in contract awards recounted above is to be removed.

DESMOND & LORD, INC.

Introduction

History of the Firm

In October, 1978, for reasons which are discussed below, the Commission selected Desmond & Lord, Inc. (D&L) for investigation. Unlike many of the other firms the Commission has investigated, the firm has existed for more than 70 years. Founded in 1908, Desmond & Lord was successful in obtaining public contracts for years preceding the period of the Commission's mandate. Public buildings designed by the firm in the years prior to 1950 include: The Elephant House at the Franklin Park Zoo; the Hyde Park Municipal Building; the Sheriff's House at the Charles Street Jail; the Boston University Bridge, the Fore-River Bridge in Quincy, and the Suffolk County Court House.

In 1960, the firm was incorporated. The only three shareholders were Henri Desmond, Israel Lord, and David Richard Thissen, Jr. Lord was named President; Desmond, Vice-President; Thissen, Treasurer; and Mary Maloof, Clerk. Thissen, Lord, and Desmond also served as directors.

In the late 1960's, Thissen completed a gradual purchase of the entire stock of the firm and assumed the direction of the company.¹ By that time, both Desmond and Lord had died.

Thissen continued to own and manage the firm from that time until 1979 when the firm entered into an agreement with John Carl Warnecke Associates of San Francisco. Under the terms of this

agreement, Desmond & Lord continues to exist as a separate entity. However, at the present time, the corporation has no employees. The Warnecke firm has taken over performance of Desmond & Lord's current contracts. Thissen is presently an employee of Warnecke.²

Thissen's Role in the Firm

Thissen joined the firm in the early 1950's. At the time, Thissen was employed as a salesman for an air conditioning and refrigeration company, Bay State York. Desmond was apparently impressed with Thissen's sales ability and decided to bring him into the firm.³ As described above, Thissen rose rapidly within the firm between 1953 and 1965.

Thissen's initial responsibility was to assist Desmond in obtaining new work. At the time, Lord was responsible for the technical aspects of the business.⁴ Concerning his role within the firm, Thissen testified: "my duties are basically to try to assist in getting work and then try to assist in getting paid for the work that we do . . . I have no duties pertaining to any technical portion of the work that we do."⁵

Although he has always served as the corporation's treasurer until recently Thissen had one of the registered architects serve as president. Two former presidents have testified, however, that regardless of the title, Thissen always controlled the company, particularly its financial affairs.⁶

Emphasis on Public Contracts

As Desmond & Lord itself acknowledges in its promotional material, most of the firm's work since at least 1960, has been

in the public sector. During the twenty year period, the firm has had significant design contracts with the following public agencies:

- Federal Government
- Bureau of Building Construction
- Government Center Commission
- Massachusetts Port Authority
- Department of Community Affairs
- Massachusetts Bay Transportation Authority
- City of Boston
- City of Revere
- City of Somerville

This record of public work placed the Desmond & Lord firm in a unique position with respect to the Legislature's mandate to the Commission to study the award of design contracts. Since, as discussed in the next section, this firm was particularly successful in obtaining public contracts, the Commission believed that an examination of the firm would illustrate many of the concerns which are discussed in depth throughout the report.

These concerns include the following questions: Has the award process been open and fair; is the process subject to political pressure; does the present process produce buildings of sound design; do principals of design firms engage in questionable conduct to obtain public contracts; and, lastly, are the accounting procedures employed by firms with a large volume of public work adequate to insure that funds received by those firms from public tax dollars are properly handled.

Desmond and Lord's Public Design Contracts

The Commission selected Desmond & Lord for investigation after reviewing records of the Bureau of Building Construction, files of the Comptroller, and the Attorney General's list of pending and settled cases. Initially, this review was conducted to guide the Commission in selecting firms for investigation. The Commission used five measures to identify those design firms which might have received preferential treatment in the award of state and county design contracts. These measures, which did not include contracts awarded to state instrumentalities, were:

1. Total number of Bureau of Building Construction design contracts within the Commission's mandate (projects in which construction contract was awarded after January 1, 1968, or on which an original design contract or a continued services contract was awarded after January 1, 1968.)
2. Total fees paid on current as well as completed contracts (for designers with over \$1,000,000 in fees already paid.)
3. Award of two or more contracts by the Designer Selection Board.
4. Number of continued services contracts for which there was no Designer Selection Board process.
5. Involvement in litigation with the state.

Firms which received a particularly large number of contracts, or a large amount of fees, or were involved in litigation with the Commonwealth were considered for further investigation. Desmond & Lord scored high on all five measures.

Bureau of Building Construction Contracts

Desmond and Lord was awarded thirty-seven Bureau of Building Construction (BBC) projects which fall within the jurisdiction of the Commission. These projects include:

- . Cape Cod Community College (CCC) - 13
- . Southeastern Massachusetts University (SMU) - 13
- . Lowell State College - 2
- . Framingham State College - 3
- . Salem State College - 1
- . Massachusetts College of Art - 1
- . Department of Public Health Institute of Laboratories - 2
- . Department of Mental Health, Treatment and Training Center - 1
- . Bristol County, Jail Facility - 1

This total of thirty-seven was surpassed only by the Masiello firm which obtained thirty-eight contracts during this period.

Fees Paid

Since January 1, 1968, the Commonwealth has paid the Desmond & Lord firm approximately \$3,743,500. in design fees for BBC projects alone. This figure represents the highest amount paid to any firm which had more than ten contracts with the BBC during this time.

Designer Selection Board Approval

Only twelve firms were awarded two or more design contracts after screening by the Designer Selection Board (DSB). Desmond & Lord was one of the twelve and ranked eighth when compared with the others on the basis of the estimated construction costs (ECC) of the awarded contracts.

Continued Services Contracts

As discussed in other chapters of this Report, continued service contracts are awarded by Administration and Finance on the recommendation of the BBC without the usual DSB selection process.⁷ Generally, the designer of an original master plan may be awarded work ranging from improvements to entire new buildings on the basis of his earlier work, merely through notification by letter from the BBC. The original contract governs the new work. Desmond & Lord received thirteen such contracts.

Not only did Desmond & Lord receive more continued services contracts than any other firm in the Commonwealth, but the total estimated construction cost for all continued service projects involving this firm was more than \$45 million. This figure is far in excess of the firm which placed second.

Law Suits

According to the Commission's review of pending and settled law suits relating to public design contracts in which the Commonwealth was a party, Desmond & Lord was involved in more such suits than any other design firm in the Commonwealth.

Public Instrumentalities

The Commission also sought to review firms which had received contracts awarded by a public instrumentality. In addition to its selection based on the criteria discussed above, Desmond & Lord was also selected for study because it was awarded a number of contracts by such a body.

Desmond & Lord in its own capacity or as a joint venture with another firm, was awarded eleven design contracts at Logan Airport during a period when that facility was being substantially expanded. These contracts were awarded by the Massachusetts Port Authority (Massport), a public instrumentality whose jurisdiction includes Logan Airport.

An analysis of Massport records performed by Commission staff, revealed that the fees paid Desmond & Lord, and its joint venture partners for these services, represented 98% of all the architectural fees paid by Massport between July 1, 1968 to June 1, 1978. Total fees paid to Desmond & Lord and its joint venture partners were more than \$7 million. Desmond & Lord and a joint venture partner also received \$1.1 million in fees for a 1967 project.

In sum, in order to fulfill its legislative mandate, the Commission decided to review the state building contract process through an analysis of this particular firm's success in winning public contracts. The sections of this Report which follow discuss what the Commission has learned about the manner in which Desmond & Lord obtained its public contracts and about the firm's performance of the design services it contracted to provide. In the concluding sections, investigative results will also be reviewed.

The Selection Process

Contracts within the Jurisdiction of the Bureau of Building Construction

Desmond & Lord was awarded design contracts for 37 projects on which the design contract or the construction contract was awarded after January 1, 1968. The corporation has received a total of \$5.57 million in fees for these projects, \$3.74 million of which was paid after January 1, 1968. The specific contracts and the fees associated with them are shown on Desmond & Lord Table 1, attached to this section of the report.

Prior to the Establishment of the Designer Selection Board

Desmond & Lord's most significant state contracts were awarded between 1963 and 1964 during the administration of former Governor Endicott Peabody. Most of these contracts fall within the Commission's mandate because they were awarded as later continued services contracts or because construction was delayed. The most significant Peabody administration awards include: Cape Cod Community College, Southeastern Massachusetts University, Institute of Laboratories, and the Mental Health Treatment and Training Center.

The section of the Final Report on the Office of Administration and Finance discusses in considerable detail the connection between political contributions and the award of design contracts during the Peabody administration. This information is summarized here.

Peabody,⁸ his Commissioner of Administration, William A. Waldron,⁹ and his principal fundraiser, Sherwood Tarlow,¹⁰ who was appointed Coordinator of Intergovernmental Relations, within A&F, all admitted in public testimony before the commission that patronage or "simple favoritism" governed the award of design contracts. Architects and engineers who contributed to Peabody's campaign were selected for state projects if the firm was competent to do the job. The Peabody fundraisers made a special practice of soliciting contributions from architects and engineers.¹¹

At a public hearing before the Commission, Tarlow testified that Thissen was Peabody's leading financial supporter. Tarlow recalls that Thissen contributed between \$2,000 and \$4,000.¹² In return, Desmond & Lord received more design contracts from the Peabody administration than any other firm.¹³ The work awarded to Desmond & Lord represented 18.9% of the total capital outlay appropriation between 1963 and 1964.¹⁴

Design contracts during the Peabody administration were essentially assigned in meetings between Tarlow and Waldron.¹⁵ Tarlow would bring to the meetings the list of firms the BBC recommended to design the projects in the capital outlay budget,¹⁶ which had been previously enacted and signed by the governor. Tarlow would bring his own list of designers who had contributed to Peabody's campaign.¹⁷ For most of the projects, Tarlow had already selected a designer.¹⁸

If Tarlow's choice did not appear on Waldron's list of recommendations from the BBC, the two men would discuss the choices.¹⁹ Often, Waldron, at Tarlow's request, agreed to inquire whether Tarlow's choice was qualified.²⁰ The inquiry consisted of calling Horace Chase, the Director of the BBC, to ask his opinion as to whether Tarlow's firm was qualified for the job. The answer was usually "yes" and Tarlow's candidate was usually selected.²¹

Thissen's testimony about how Desmond & Lord obtained state work reveals the manner in which he sought at the outset to ingratiate himself with BBC personnel. Thissen testified that he would obtain a copy of the Capital Outlay Program and would follow it through to find out what monies were appropriated for certain state projects.²² Once the program was established, he would contact the BBC to sell the idea that Desmond & Lord was the right architect for the job.²³ According to Thissen's testimony, he cultivated the people on the BBC level because even though they did not have jurisdiction to actually award the contract, they could informally recommend, or agree that whoever was selected was competent or capable of doing the work.²⁴ Thissen also met frequently with the Directors of the BBC.²⁵

Thissen testified that Desmond & Lord would "try to assist in any way we could to help get the job."²⁶ One form of assistance he offered was to contribute his services to the selection or recommendation of a site if no appropriation had been made for such services. Sometimes he was compensated for

this work and sometimes he was not.²⁷ But if Desmond & Lord succeeded in obtaining the contract, usually a payment for the site selection was included.²⁸

This brief review illustrates that prior to establishment of the Designer Selection Board, the designer selection process was susceptible to varying degrees of political influence. The Commission's examination of this process confirmed that the award of many of these contracts in the era was based solely on whether or not the principals of the firm made the right contribution to the right individual. A discussion of whether or not these selections resulted in state buildings of sound design is set forth.

Selections by the Designer Selection Board

As a result of concerns about the process of selecting designers for state buildings, the General Court established the Designer Selection Board (DSB) in the fall of 1966. The Board, whose composition and functions are described more fully in another section of this Report,²⁹ publishes public notices of architectural projects, receives applications from designers, selects three finalists for each project, and forwards the three names to the Commissioner, later Secretary, of Administration and Finance, who makes the final decision.

The first meeting of the DSB took place on December 6, 1966. On December 14, 1966, according to DSB records, Desmond & Lord filed eight applications for design contracts. One of these was for the Fine Arts Building at what is now Southeastern Massachusetts University. Desmond & Lord was one of the three finalists for this job who were selected on May 22, 1968. On June 25, 1968, the firm was appointed the designer for the project.

The Fine Arts Building was a major contract in a complex for which most of the other buildings had been designed by Desmond & Lord. The Commission has found no other explanation for the award of this contract.

According to DSB records, in the five years between December, 1966 and January, 1974, Desmond & Lord applied for at least 44 design contracts. The firm was one of the three finalists on two occasions, but was not awarded the contract in either case.

Documents obtained from former Governor Francis Sargent's files in the state archives, suggest that Thissen may have tried to do something about his firm's lack of success in the DSB selection process. These documents, which are summarized below, are discussed in greater detail in the section on Administration and Finance in Volume IV of this Report.

Handwriting by Sargent's appointment secretary on a form document headed "Request for Appointment", dated June 22, 1973, indicates that Thissen or someone else on his behalf, requested an appointment "to discuss architect jobs".³⁰ Under the comments

portion of the request form is typed: "He's [Thissen] a member of the Governor's Club. Vic [Zuchero, the Executive Director of the Sargent committee] would like him to meet with Governor. Is there any reason why he hasn't been given any architect jobs?"³¹

The Governor's Club was composed of individuals who annually contributed \$500 or more to Sargent. Records of the Sargent Finance Committee obtained by the Commission showed that Thissen had contributed \$2,500 over the five years, 1970-1974.

The request also contains a handwritten note "Tues July 3, 3:30 P.M.". Under the heading "Policy Office: Recommendation" appears the handwritten note "Dwight or Cowin would seem better."

A "Schedule for Governor Francis Sargent, Tuesday, July 3, 1973" indicates that Thissen was given an appointment at 3:00.³² An August 23, 1973 memorandum to Governor Sargent reads: "The Governor will play golf on Saturday August 25, 1973 with Dick Thissen, and Vic Zuchero. The game will be played at Oyster Harbor in Osterville at 9:00 a.m."³³

In a voluntary appearance before the Commission, former Governor Sargent, after reviewing the documents mentioned below, testified that he did not recall ever meeting Thissen either in the Governor's Office or at a golf club.³⁴

An invoice from the Oyster Harbor Club in Osterville, addressed to David R. Thissen, Jr. at 6 Beacon Street, Boston, lists two charges for August 25, 1973. Among the checks attached to the invoice is one for "Green Fee Charges" dated 8/25 and listing two guests one of whom was Governor Sargent at \$12 each. The second check is a golf cart rental agreement dated 8/25 for \$10.³⁵

Sargent also testified that he does not recall Thissen ever approaching him about any specific contract.³⁶ According to Sargent's testimony, if Thissen had simply complained that he wasn't getting any contracts, Sargent might have referred the matter to someone in his administration but he would not remember the incident because he received complaints and requests all the time.³⁷

On January 16, 1974, the DSB published a public notice of a contract to design a new Bristol County Jail. The estimated construction cost of the project was \$5,512,000. The DSB received 56 applications for this job by the January 31 deadline. One of the applications was a letter from Desmond & Lord. The letter advised the Board of the firm's interest in the jail project and stated that Desmond & Lord had "provided the Commonwealth with similar services at Walpole State Prison and the Study for Youthful Offenders at Norfolk."³⁸ The Commission has found no other reference to these earlier contracts in any of the Desmond & Lord brochures or client lists produced by the firm.

At the February 13, 1974 meeting of the Designer Selection Board, five major projects were considered, including the design contract for the Bristol County Jail. Three finalists were selected for the jail project at that meeting: Desmond & Lord, Masiello, and Sasaki, Dawson, and Demay.

The Commission interviewed or took testimony from all the DSB Board members who attended that meeting.³⁹ (Chairman Earle Littleton was hospitalized at the time of the DSB meeting and did not participate in the decision.)⁴⁰ No board member recalls suggesting Desmond & Lord, although Andrew Paton thinks he may have been the one who recommended Sasaki, Dawson.⁴¹ Peter Brown, one of the six board members and a former president of Desmond & Lord, testified that he did not vote for Desmond & Lord for this project because he thought the firm had enough state work.⁴²

On February 14, 1974, the DSB sent a letter listing the names of the three finalists it had selected to William I. Cowin, Secretary of Administration and Finance, whose responsibilities included awarding design contracts. At a public hearing Cowin testified that he had some reason to believe that Desmond & Lord may have been the choice of the Bristol County Commissioners because during that period he had tended to select the County's choice for county projects.⁴³

Commission investigators interviewed Frank Viera, William F. Long, and Patrick Harrington, who were the Bristol County Commissioners at the time Desmond & Lord was selected. Each stated

that the county's choice was Owen Hackett, a Bristol County architect. According to the Commissioners, they knew nothing about Desmond & Lord until they were notified that the firm had been awarded the contract.⁴⁴

Cowin testified that generally in making his selections, he tried to find out something about the candidates' past performance.⁴⁵ The Commission has not discovered evidence to support that assertion in this case. In fact, by this time design errors at Desmond & Lord projects Cape Cod Community College and Salem State College Library had received considerable publicity.⁴⁶

Cowin, according to his testimony, made his selection on the February 14 letter from the DSB by placing an arrow and his initials next to the name of Desmond & Lord.⁴⁷ Handwriting expert Elizabeth McCarthy testified that a dot which also appears on this letter next to the name of Desmond & Lord was written on the letter before Cowin wrote the arrow and his initials.⁴⁸ The significance of this dot and Lieutenant Governor Dwight's involvement in contracts is discussed in another section of this Report⁴⁹ and need not be reviewed further here.

At a public hearing before the Commission, William V. Masiello testified that he had sought the contract for the Bristol County Jail project for his firm Masiello & Associates. He said that he sent a letter to the County Commissioners expressing his interest in the contract, and that he personally asked the Sheriff of Bristol County to support his application.⁵⁰

Masiello testified that when he discovered he was on the final list of three, he called Senator James A. Kelly. According to Masiello, Kelly called Albert Zabriskie on Masiello's behalf.⁵¹ Masiello testified that as a result of these conversations he immediately knew "that the project had a problem, that we were not going to get it."⁵² Masiello then tried other approaches, including the Senate President and the Republicans that he knew.⁵³ According to Masiello's testimony, they all told him after making inquiry that Desmond & Lord was going to be awarded the contract and that there was no longer anything that Masiello could do about it.⁵⁴

According to Masiello, after his failure to win the Bristol County Jail contract, he prepared more deliberately for the next project he wanted, the Springfield Mental Health Center.⁵⁵ Masiello testified that Albert Manzi, a fundraiser for Governor Sargent, was one of those with whom he spoke about the Bristol County job. Masiello said that Manzi told him there was nothing he could do, but when Masiello asked Manzi who he should contact in the future about contracts, Manzi gave him the name of Vic Zuchero.⁵⁶ Subsequently, according to Masiello's testimony, Vic Zuchero introduced him to Donald Dwight.⁵⁷ This incident is treated in more detail in the section on Springfield Mental Health Center project in Volume III of the Final Report.

When Masiello later encountered Thissen at a restaurant in Worcester, the two men discussed the Bristol County Jail project as well as another project Masiello had lost to Desmond &

Lord.⁵⁸ Masiello testified that after a series of conversations, which took place over a period of weeks, he and Thissen agreed not to compete for the same projects.⁵⁹ This incident is also discussed more fully in the Springfield portion of the Masiello section in Volume III of this Report.

The evidence connected with the award of the Bristol County Jail project shows that political contributions provide access to powerful politicians. Thissen was able to arrange a golf game with Sargent because he was a member of the Governor's Club. Masiello's testimony suggests that even after the establishment of the DSB, political contributions influenced the award of design contracts.

Massport Contracts

Since the creation of the Massachusetts Port Authority in 1956, Logan Airport, one of the facilities under Massport's jurisdiction, has expanded considerably. A few new buildings have been constructed at a cost of approximately \$100 million. Desmond & Lord alone or as a joint venture partner, received more than 98 percent of the total fees paid to architects for the design of these buildings. For those buildings which are within the jurisdiction of the Commission, Massport paid Desmond & Lord and its joint venture partners more than \$7 million. These projects and their fees are listed in Desmond & Lord Table 2.

In an effort to determine how one firm was awarded such a substantial proportion of the design contracts, Commission staff conducted interviews across the nation and examined documents from Desmond & Lord, its joint venture partners, Massport, and, in some cases, the airlines. This study was limited to two issues: (a) did Massport have a competitive selection process, and (b) how was Desmond & Lord selected.

The first issue was resolved in short order: There was no formal selection process, competitive or otherwise, during that period of time. Investigative work revealed the following:

- Massport design contracts were never publicly advertised.
- There were no design competitions or competitive presentations before the Massport Board.
- Sometimes architects simply called Massport officials to solicit Massport work. 60
- On occasion, Massport staff would invite firms of their choosing to submit proposals for contracts. No other firms had an opportunity to compete for those contracts. 61

In its search for information about the procedures for selecting architects for Massport, Commission staff reviewed the minutes of Massport Board meetings and contract files. The minutes record the votes awarding design contracts. However, these minutes do not provide information about the discussion preceding the vote or any information about the processes leading to staff recommendations. The contract files contain the contract documents and

provide no information about the selection of the architects. Nothing in the Massport files provides any information about the basis for selecting Desmond & Lord as the sole designer or joint venture partner for any Massport project.

This lack of an established policy is reflected in the contradictory information which was provided by those whom the Commission interviewed. For example, some past Board members reported that the Board discussed the staff's recommendations prior to voting the actual selection.⁶² Others stated that the Board merely approved the staff recommendations.⁶³ Another Board member told Commission staff that it was the airlines who selected the architects.⁶⁴

At a voluntary appearance before the Commission, Edward J. King, who was Executive Director of Massport between 1964 and 1974, described the procedure for awarding design contracts at Massport as follows:

Over the period of time it would include starting with the last act would be a vote of the full Authority. The full authority would act on a recommendation of the staff which would include a very large portion of that time, I can't be accurate as to the time, a recommendation of an engineering subcommittee which was made up of Authority members, three or two, maybe four and supported by staff . . . The work would include a need or a demand by the airlines for services or another concessioner and there would be economic input in most instances. 65

He also said that the airlines had a greater role in the selection of architects than the members of Massport did.⁶⁶ Although he joined staff recommendations⁶⁷ at the board meetings, King said

that he had "no specific knowledge"⁶⁸ and "no memory"⁶⁹ about the selection of Desmond & Lord as architect on Massport projects.

With these uncertainties in mind, the Commission concentrated on the selection process of two of the major terminals involving Desmond & Lord: the Volpe International Terminal and the South Terminal. The results of the interviews conducted with those who were involved with these projects follow. A third project, the South Station Complex is also briefly discussed.

International Terminal

Expansion of the facilities for the international carriers at Logan Airport during the 1960's was an ongoing process that involved, at first, expansion and renovation of the existing international terminal, and, ultimately, the construction of the New Volpe International Terminal.⁷⁰ Both Desmond & Lord and Kubitz & Pepi were involved in the earlier expansion and renovation, and, as joint venture partners, were the architects involved in the design of the Volpe Terminal.⁷¹

The decision to construct a new terminal grew out of meetings and negotiations among the airlines, and between the airlines and Massport. Initially the airlines formed inter-airline committees at which they established their needs (i.e. number of gates, expected passenger traffic, feet of ticket counters, etc.) Subsequently they presented these requirements to Massport.⁷² Executives from Properties and Facilities of Pan American, TWA,

BOAC, Air France, Alitalia, Lufthansa, Irish, and Air Canada were involved in these meetings. In many cases, the local airport managers for these international carriers also participated.⁷³ The principal Massport official involved was Richard E. Mooney, Director of Aviation.⁷⁴ There was never any direct contract between the airlines and the Massport Board.⁷⁵

Unlike the Eastern Terminal which involved only one airline, the International Terminal involved nine carriers. Whereas Eastern made a long term financial arrangement for its terminal, the international tenants pay an annual fee which is subject to change. Therefore, in contrast to the Eastern terminal for which Eastern actively participated in the architect selection, Massport had more control over the International Terminal.⁷⁶ This control included the selection of the architects and consultants and the negotiation of their fee.⁷⁷

Frederick "Fritz" Kubitz had been chief designer for Perry, Shaw, Hepburn & Dean on the North Terminal at Massport. In 1964 he and Franklin Pepi left that firm to form their own company, Kubitz & Pepi.⁷⁸ They received some small contracts from Massport for renovations to the old International Terminal.⁷⁹

According to Commission interviews with Richard Mooney, the Director of Aviation, and with Kubitz & Pepi, sometime after these renovations, Pan American Airlines retained Kubitz & Pepi to prepare the preliminary design schematics for the new terminal.⁸⁰ Kubitz & Pepi stated that Pan Am put up the "seed money"

(less than \$10,000).⁸¹ Mooney represented Massport in the negotiations with the architects. Thomas Kuhn, Chief Engineer, represented the authority on technical matters.⁸²

The preliminary designs were completed in the fall of 1966. Kubitz and Pepi told Commission interviewers that since the plans had been generally accepted, they expected to be retained as architects for the overall design.⁸³ However, according to Kubitz, a Massport official, who may have been Mooney, informed them that their firm was too small to do the project without a joint venture partner. Kubitz and Pepi stated that the Massport official implied that Desmond & Lord was an acceptable choice and that Kubitz & Pepi would have a better chance of winning the contract if Desmond & Lord were the joint venture partner.⁸⁴ In a second interview, Kubitz said that his firm considered other possible joint ventures but concluded that they would have a team more acceptable to Massport with Desmond & Lord because Desmond & Lord had been involved in so many of the other projects at the airport.⁸⁵

As a result of this conversation, Kubitz telephoned the Michigan architectural firm of Yamasaki and Associates, with whom Desmond & Lord had been associated on the Eastern Terminal. After obtaining a good recommendation from Yamasaki on the qualifications of Desmond & Lord as a joint venture partner, Kubitz called Thissen to suggest a joint venture partnership to design the International Terminal.⁸⁶

Desmond & Lord and Kubitz & Pepi negotiated an agreement to divide the design fee equally between the firms. The contract gave Kubitz & Pepi principal responsibility for the design and primary contract over the project. Desmond & Lord was to be primarily responsible for preparing the working drawings and supervising the construction phase of the project. In December 1966, Massport as owner, and Kubitz & Pepi/Desmond & Lord, as architects, reached an agreement.

According to interviews with Carl I. Kneisel, Vice President for Properties and Facilities and Eugene T. Kelly, Airport Manager, both of Pan Am, the airlines did not hire Kubitz & Pepi. They told Commission investigators that Massport hired Kubitz & Pepi and Desmond & Lord on the recommendation of Kuhn. Kneisel and Kelly stated in separate interviews that Pan Am and the other international carriers were impressed with Kubitz's work with a New York firm and with Perry, Shaw, Hepburn and Dean. They said that Pan Am had a preference for retaining Kubitz as the design architect for the International Terminal although this preference may never have been communicated to Massport. According to Kneisel and Kelly, Kubitz attended the early stages of discussions concerning design as a "consultant" to Massport. They deny that Kubitz & Pepi had an contractual relationship with Pan Am for the design of the terminal. In interviews with Commission investigators, they stated that no drawings or schematics were prepared by Kubitz & Pepi prior

to the involvement of Desmond & Lord. In their view, Desmond & Lord and Kubitz & Pepi became involved at the same time at a preliminary stage of design.⁸⁷

Both Mooney and Kuhn denied any knowledge about the selection of Desmond & Lord as the joint venture partner. Each man specifically denied suggesting to Kubitz & Pepi that they form a joint venture with Desmond & Lord.⁸⁸

It is clear that there was no competitive selection process in the award of the contract for the International Terminal. In all likelihood, Kubitz & Pepi was too small to design a project of this magnitude on its own and the selection of a joint venture partner was a logical way to insure that the firm had adequate facilities and personnel to do the job. However, Kubitz & Pepi's selection of Desmond & Lord as their joint venture partner appears to have been influenced by Massport officials.

South Terminal

According to Nesbitt A. Garmendia, a partner in the New York architectural firm of Hillman-Garmendia, in 1964 Arnold Thompson, Director of Facilities Design for American Airlines, approached the firm to do the design for a proposed project in Boston.⁸⁹ American wanted to replace the old Boutwell Building at Logan, which was used by Mohawk, National and Allegheny as well as American.⁹⁰ American, as the largest of the carriers, took the lead in hiring an architect, according to Thompson.

The other carriers provided limited input.⁹¹

At this point, the discussions between Hillman-Garmendia and American did not include Massport.⁹² John Hillman and Walter Hart, who replaced Thompson in 1965, each stated to Commission investigators that Hillman & Garmendia prepared a model to be used in discussions with Massport and the other carriers.⁹³

According to Garmendia, sometime between October, 1964 and August, 1966, Hillman contacted the structural engineer Lev Zetlin, in an effort to form a design "team". Hillman thought this might enhance the firm's chances of being selected to design the proposed terminal.⁹⁴ Hillman and Zetlin both told Commission investigators that Hillman arranged at least one meeting between the architects, the structural consultants, and American to discuss the project.⁹⁵ Later Hillman also selected the engineering firm of Joseph Loring for the "team".⁹⁶

According to Hillman & Garmendia, they served as consultants to American, who paid them on a time card basis.⁹⁷ None of the other airlines paid any part of their fees.⁹⁸

In the fall of 1966, the concept of the terminal changed, according to Hart. Originally the project included a roadside terminal with a three level garage above the terminal. The new proposal involved a centrally located garage in the apron area. Hart told Commission investigators that the change in concept required different and more detailed drawings. Hart stated that

Mooney suggested that the Boston architectural firm of Desmond & Lord, which had already done considerable work at the airport, could provide the necessary additional designs. According to Hart, American did not object, particularly since Massport had the right to select the architect in any case.⁹⁹

According to Hillman and Garmendia, they were informed that the Boston firm would be involved in the project during a meeting that included Hart and Mooney. Hillman and Garmendia stated that they were told that Thissen, the president [sic] of the firm, would come to New York to meet with them.¹⁰⁰

The subsequent meeting in the New York offices of Hillman & Garmenida at which Thissen was introduced, may have been attended by Hart, Mooney, Kuhn, Hillman, Garmendia, Loring, and someone from the Zetlin firm (possibly Vincent DeSimone). According to Hillman and Garmendia, Thissen made it clear that "we [Desmond & Lord] do all the work in Boston for Massport." Hillman stated to Commission investigators that the consultants he had selected, Loring and Zeltin, "played up" to Thissen. Hillman said he recognized that Hillman-Garmendia's involvement in the project was nearing an end.¹⁰¹

According to Charles Hagenah, who at the time was a young architect at Desmond & Lord, Thissen sent him to work in the New York offices of Hillman-Garmendia. In an interview, Hagenah said that Thissen gave him the impression that Desmond & Lord had the contract and that he was going to New York to represent

Massport's interest. He considered that Hillman-Garmendia were American's architects. Hagenah continued to go to New York a few days per week for several months, where he reviewed the plans Hillman-Garmendia were producing.¹⁰²

By this stage of the negotiations concerning the new terminal, the airlines had formed a technical committee and a negotiating committee, to deal among themselves and with Massport. These committees were made up of executives from the airlines involved in the terminal. Alan Mills, of American, was the Chairman of the Negotiating Committee. This committee dealt primarily with Mooney. Hart, of American, was Chairman of the Technical Committee, and this committee dealt primarily with Kuhn.¹⁰³

In the winter of 1967 (January or February) National Airlines hosted a meeting of the airline committees, Massport, and the architects in Miami, Florida. Hillman, Garmendia, Ron Reeves, (the Allegheny Airlines representative to the Negotiating Committee), Hart, Mooney, Kuhn, Hagenah, Thissen, representatives of some of the other airlines, and possibly some consultants attended.¹⁰⁴ During this two day meeting, there was a large dinner.¹⁰⁵ Hillman thinks Thissen paid for the dinner.¹⁰⁶ The purported purpose of the meeting was to present the designs, based on the "new concept," to the Technical Committee.¹⁰⁷

During the spring of 1967 Hillman & Garmendia were phased out of the project entirely. They discussed this with Hart, to no avail; they were simply not asked to do any more work.¹⁰⁸

As the scope of the project grew, Massport drew up a list of "name" architects. Additional names were solicited from the airlines' technical staff and the Negotiating Committee forwarded these names to Massport.¹⁰⁹ Among the names of the list were: I.M. Pei, Yamasaki, Philip Johnson, John Carl Warnecke, Roche & Dinkeloo, and Skidmore, Owens & Merrill. Massport narrowed the list to four: Johnson, Warnecke, Roche & Dinkeloo, and Skidmore, Owens & Merrill.¹¹⁰

Massport invited the airlines to participate in interviews of these four firms, and a group including Kuhn of Massport, Hart and Sy Weizman of American Airlines, and (probably) Ray Murray of Mohawk was formed to conduct these interviews. In order to allow the interviewers to meet the people who would be involved in design and to see their facilities, the interviews were held at the offices of the four architects.¹¹¹ Each meeting consisted of a short interview with at least one of the principals of each firm (e.g. Dinkeloo of Roche & Dinkeloo; Philip Johnson and John Burgee of the Johnson firm; and Eugene Kohn, who was in charge of the New York office of John Carl Warnecke).¹¹² Each firm was informed that similar interviews were being conducted with other firms.¹¹³

Philip Johnson and John Burgee were told at their interview that Desmond & Lord and Lev Zetlin had already done some work on the project. They were also informed that Massport was seeking a "name" firm to work with Desmond & Lord, and that the

firm which was selected would have primary responsibility for design. The interview involved a general discussion about the firm, its personnel and prior work; no specifics about proposed design or the new terminal was discussed.¹¹⁴

A second interview for the Johnson firm, to include other members of the Massport staff, was scheduled to occur in Boston.¹¹⁵ On the morning of the Boston interview, Johnson and Burgee met with Richard Thissen at the Desmond & Lord offices, where they saw some of the preliminary drawings prepared by Desmond & Lord. No specifics of a possible joint venture were discussed.¹¹⁶

After meeting with Thissen, Johnson attended the scheduled interview at Massport. According to Johnson's memory, the airlines and Massport officials suggested that his firm make arrangements with Desmond & Lord and Lev Zetlin, because they wanted those firms to continue on the job.¹¹⁷

According to Kohn, at the Warnecke firm's first interview, he was told that a "small New York firm" had done some work but that the firm was to be replaced by a "name" firm. There was also a general discussion about a local joint venture. No specifics were discussed; not does he recall any mention of work done by Desmond & Lord or Lev Zetlin.¹¹⁸

Kohn stated that Warnecke was very interested in the South Terminal contract. The New York office of John Carl Warnecke was new and the South Terminal project was a key contract.¹¹⁹

Warnecke and Kohn also met with Thissen in Boston prior to their second interview with the committee. At that meeting Warnecke and Thissen reached a tentative agreement that if

Warnecke were selected, they would enter a joint venture in which the fees would be equally divided between the two partners.¹²⁰

According to Kohn, later that same day, he and Warnecke met with Massport officials at the Massport offices. Kohn says that Thissen accompanied Warnecke and him to the meeting. The discussion at the meeting concerned the firm's qualifications.¹²¹

In a December 12, 1967 letter from Kohn to Edward J. King, Executive Director of Massport, Kohn expressed the Warnecke firm's "extreme interest" in performing the architectural services for the proposed terminal. Kohn stated that the firm was willing to associate with a Boston firm and suggested "any of the following three: Desmond & Lord, Samuel Glaser Associates, or the Architects Collaborative, Inc." In a second letter dated December 13, 1967, one day later, Kohn stated that the firm would associate with a Boston firm, "preferably Desmond & Lord." The letter referred to discussions "with you and your staff yesterday." In an interview with Commission staff, Kohn said that he probably wrote the letters at Warnecke's request.¹²²

Apparently the Massport Committee initially selected the Johnson firm. Shortly after all the Boston interviews took place, Thissen called Hagenah into his office and told him that Desmond & Lord had another major project at Massport. According to Hagenah, while he was still in Thissen's office, Thissen called Johnson and said something like "I hear we are going to be partners."¹²³ Johnson told Commission investigators

that he had already been sent a copy of a contract and was prepared to come to Boston to sign it.¹²⁴

According to Johnson, Thissen called again later that same day to say that some problems had developed, and that Johnson should postpone his trip to Boston. Within a week Thissen called a third time to tell Johnson that Warnecke had been selected to design the new South Terminal.¹²⁵

In executive session on December 21, 1967, the Massport staff recommended that the Massport Board approve the selection of the Warnecke/Desmond & Lord joint venture. The Board voted to authorize an agreement with the joint venture at a fee of 5 1/2 percent. The fee included the employment of Paul Weidlinger or Lev Zetlin as structural engineers and Joseph Loring as mechanical, electrical, and plumbing engineer.¹²⁶ The contract was signed on February 14, 1968.

In contrast to the International Terminal, Massport did conduct a competitive selection of sorts for South Terminal. However, the process applied only to the selection of the "name" architect. No invitations to apply for the "working drawings" part of the contract were extended.

The leading contenders for selection as lead architect were Philip Johnson and John Carl Warnecke. Neither one is a Massachusetts firm. For an out-of-state firm to use a local joint venture partner on a project such as South Terminal is not unusual. But it is striking that both firms clearly recognized the importance of Desmond & Lord. Each met with Thissen and

Desmond & Lord architects on the morning of his meeting with Massport officials.

Moreover, even when Massport used a somewhat more formal process to select the lead architect for South Terminal, that process was nevertheless subject to manipulation. The Johnson firm had apparently been selected for the job, when it was awarded instead to John Carl Warnecke.

South Station Complex

In the early 1960's, the Boston Redevelopment Authority (B.R.A), was interested in developing the South Station area. The B.R.A., which had overall control of revitalization plans for the area, sponsored competition to choose a concept and a design.¹²⁷

In the latter part of 1964, Massport invited the Cambridge architectural firm of Sert, Jackson and Associates to prepare designs for a complex to include a transportation center, mechandise mart, office facilities, garage facilities, and at least one hotel, for submission to the B.R.A. design committee. Massport was interested in relocating its offices in such a complex. Massport signed a contract with Sert, Jackson on January 15, 1965.¹²⁸

The Sert, Jackson proposal, sponsored by Massport, won the design competition. Over the next several years, representatives of Massport, Sert, Jackson, the B.R.A., the railroads, the MBTA, various city agencies, urban design departments, and other interested parties, met on a number of occasions.¹²⁹

According to Huson Jackson, after working alone on the project for five years, Massport suggested in 1970 that his firm associate with another architectural firm. Massport said that the second firm would have responsibility for preparing the production drawings for the proposed \$70 million complex. Although he does not recall exactly who made the suggestion, Jackson is sure that it was "one of the responsible, high ranking officers." Desmond & Lord was the firm which was recommended.¹³⁰

In an interview with a Commission investigator, Jackson said that until that time, the firm had intended to do the project without a joint venturer. But following the suggestion, Jackson met with Thissen, Peter Brown, Alphonse Mancuso, Jan Heespelink, and Charles Hagenah at the Desmond & Lord offices. Jackson said that he was favorably impressed with some of the young Desmond & Lord architects.¹³¹

However, according to Jackson, before anyone from Sert, Jackson had time to inform Massport of its decision on the joint venture suggestion, Massport was referring to Desmond & Lord and Sert, Jackson as associates on the project. On July 16, 1970, Massport (Edward T. Hanley, Secretary-Treasurer) signed a contract with the "architects" - Sert, Jackson & Associates, Inc. (Huson Jackson, Vice President and Chairman) and Desmond & Lord, Inc. (Charles Hagenah, Vice President). According to Jackson, the fee, set at 5.4% was negotiated "probably" with Hanley.¹³²

A memorandum concerning the appropriate fee for this project was found by Commission staff in the Massport files. The memorandum, prepared by Paul May, Director of Development for Massport, reviewed the various methods of computing a fee for a project of this magnitude. It recommended that the "Percentage of Construction Cost" method be used.

In the memorandum, May discussed three possible methods for arriving at an appropriate percentage figure. After applying the American Institute of Architects Schedule of Minimum Fees, the Market Architectural Rates Survey (1967) which reviewed the fees paid on similar projects such as the World Trade Center in New York City, and the Boston Waterfront Development, and after soliciting expert opinions, May concluded that "[w]e cannot rationally advocate that the Architect be paid a percentage any higher than our 3.7 percent figure . . ."

When asked by Commission staff about the memo in relation to the 5.4% fee sent in the executed contract, May said that he had no input into fee negotiations, and that the memo was never circulated.¹³³ However, the memo was discovered by Commission staff in the files of a Massport official who was involved in the preparation of the contract, with handwritten notations on the memorandum.

As a result of a ruling that Massport's Trust Indenture precluded it from issuing bonds to finance the project, the plan collapsed shortly after the 1970 contract was signed.

Because it has not yet done any work on this project, Desmond & Lord never received any money for the South Station Complex.¹³⁴

The Commission has nevertheless included this project in its report because the South Station Complex highlights a number of questions about Desmond & Lord's work at Logan Airport. Sert, Jackson is a world renowned architectural firm located in Cambridge, Massachusetts. In contrast to Kubitz & Pepi or Hillman-Garmendia, it was neither small nor young. In contrast to John Carl Warnecke, it was local. In spite of Sert, Jackson's professional qualifications, a high ranking Massport official urged the firm to use Desmond & Lord to prepare working drawings which Sert, Jackson had intended to prepare itself. And it appears that Massport assumed that Jackson had accepted and acted on this suggestion even before he communicated a response. Thus, even though Massport was not controlled by elected officials who were constantly raising campaign funds, the procedure for selecting architects appears to have been subject to favoritism and influence.

Performance of Design Contracts

In order to evaluate performance on public design contracts, the Commission hired technically trained staff to study buildings designed and constructed for the Commonwealth. These architects, engineers, and investigators carefully examined selected buildings and conducted interviews with persons involved in the use, design, and construction of these buildings. In addition, the Commission reviewed the litigation files of the Attorney General in order to determine which projects were involved in suits with the Commonwealth.

The Commission discovered that a number of the buildings awarded to Desmond & Lord under the Peabody administration are poorly designed. The buildings at Cape Cod Community College (CCCC) are structurally unsound. Extensive problems with water seepage not only threaten the buildings' structural integrity, but limit their usefulness. These design deficiencies are discussed in detail in another section on CCCC.¹³⁵

The Commonwealth sued Desmond & Lord and four of the five
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general contractors for these errors. Desmond & Lord, who impleaded Sepp Firnkas as a third party defendant, moved for summary judgment on alternate grounds that the applicable statute of limitations had run and that the Commonwealth's action was barred by the terms of the "release discharge" clause in the contract between it and the Commonwealth.

The clause at issue, part of the Commonwealth's standard designer's contract, provided that upon payment to and acceptance by Desmond & Lord of 75 percent of its agreed upon compensation, it would be released from liability. The payment of 75 percent of the fee occurs upon the award of the construction contract, which clearly must occur before any actual construction begins.

On the other hand, the statute governing the contract¹³⁷ requires that the designer provide general supervision of construction of the projects. The judge in the CCCC case stated that he considered the contract to be self-defeating.

Although he indicated that if he were free to do so, he would deny the motion for summary judgment, the judge granted Desmond & Lord's motion on the grounds of the release clause. He did so because Desmond & Lord had already succeeded in winning summary judgment on the same grounds in an earlier Superior Court case involving a different Desmond & Lord project. Hence, the matter was res judicata as between the parties.

The court reported the case to the Appeals Courts on its own. It will be heard on January 14, 1981.

The State Institute of Laboratories, another Desmond & Lord project awarded by the Peabody administration also has design deficiencies. This project and its problems are discussed in the construction section of this report in Volume VI.

Desmond & Lord was awarded four design contracts by the Volpe administration: Massachusetts College of Art (which has not been built), the Fine Arts Building at SMU, the Science classroom building at Lowell State College and the Salem State College Library. Of the three projects that were actually constructed, at least two are or have been in litigation.

In the case of the Salem State College Library, design and construction errors required the closing of the building and the expenditure of more than \$1 million for repairs. These errors are treated in detail in another section of this Report. 138

Briefly, the problem was that Desmond & Lord's structural consultant, Sepp Firnkas Engineering, Inc. who was also the structural engineer at CCCC, failed to include in the shop drawings sufficient reinforcing steel to prevent the concrete cantilevers from deflecting from the building. This design error was compounded by incorrect placement of steel during construction. Because of the dangers posed by these structural deficiencies, Robert Quinn, the Attorney General of the Commonwealth at the time, on January 21, 1972 ordered that the building be closed and construction halted while the problems were investigated.

As a result of the delay, the contractor, Palandjian Brothers, Inc. filed suit against the Commonwealth to recover losses associated with the delay and to secure a declaratory ruling as to their posture in the case. The Commonwealth 139
impleaded Desmond & Lord as a third party defendant.

After extensive hearings, then Assistant Attorney General John Davey recommended to Walter Poittrast, Director of the BBC, that the state settle with Desmond & Lord's insurance company for \$200,000. Davey stated in an interview that he recommended the settlement because there were so many other outstanding claims against Desmond & Lord that he was afraid the state would get nothing if it did not settle.¹⁴⁰ In his letter of November 13, 1974 to Poittrast recommending the settlement, Davey stated:

The maximum policy obtainable was \$1 million. Almost \$200,000 had already been employed by the insurance company for services directly applicable to the completion of the library. This left approximately \$800,000 to be distributed among the subcontractors, the contractors and the Commonwealth. A further factor was that the architectural firm displays negative assets beyond the policies of standing on this particular job.¹⁴¹

Mancuso, who handled the project for Desmond & Lord, testified that he does not recall any conversation with Davey about the financial condition of the firm.¹⁴² According to Mancuso's testimony, as well as the annual corporate Certificate of Conditions filed with the Secretary of State, Desmond & Lord was financially healthy and showed assets at the time the letter was written. On the other hand, Davey said in an interview that ordinarily the state did not seek recovery beyond the limits of an insurance policy. Moreover, he stated that the Commonwealth was fortunate that Desmond & Lord had any insurance because the standard state contract then in effect did not require that a designer carry an errors and omissions policy.¹⁴³

Sepp Firnkas was the structural consultant for many Desmond & Lord projects, including SMU, CCCC, and Salem State Library where there were significant structural problems. The manner in which he was selected for these jobs may shed some light on the design failures associated with buildings on which he worked.

Firnkas told the Commission staff that his first job with Desmond & Lord was at SMU. Thissen had originally selected another firm to be the structural engineer at SMU. But that engineer apparently was not qualified to handle the complex concrete structures designed primarily by Paul Rudolph, an independent contractor working for Desmond & Lord. One of the young architects at D & L who had previously worked with
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Firnkas recommended him to Thissen.

According to Firnkas, each time he was hired for a Desmond & Lord project, Thissen would meet with him initially to bargain about the fee. If Firnkas agreed to Thissen's terms, Firnkas would be hired and would then confer with the architects about the nature of the work. Firnkas stated that Thissen was a very good bargainer. The standard fee for the type of job Firnkas did for Thissen was 3/4 percent of the total construc-
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tion cost.

According to Firnkas, normally a fee is negotiated on the basis of preliminary sketches. After the cost of the building is estimated, the difficulty of the job can be determined from the sketches and the cost estimate. Then a lump sum

fee is agreed upon, based on a percentage of the estimated construction cost. He said that Thissen's cost estimates were very misleading, and much too low. There was always something extra on Desmond & Lord's buildings -- something added later, or something that was not shown on the preliminary drawings. The result was that although Firnkas thought he was negotiating a regular fee, in fact he ended up with a very low fee.¹⁴⁶ During these years, work for Desmond & Lord accounted for about half of the work his office did.¹⁴⁷

BBC records reveal that in several instances Desmond & Lord requested permission to substitute Sepp Firnkas as the structural consultant on a project for which the firm had initially selected another consultant. In addition to the SMU project discussed above, the projects for which these substitutions were requested and granted include: the Institute of Laboratories, Cape Cod Community College and perhaps the Boston Mental Health Center (TTRC).

Firnkas stated that he did very limited supervision on Desmond & Lord jobs. He or one of his engineers visited the site once a week or once every two weeks. Under his contract with Thissen, Firnkas was not paid to do any more supervision than he provided.¹⁴⁸

Mancuso, an architect who served as president of Desmond & Lord from July, 1964 to April, 1978, testified that the architects knew when Thissen had hired a consultant because the consultant simply began working with the design staff.

Occasionally Mancuso would recommend or request a particular consultant. Sometimes Thissen followed his suggestion, but when he did not the explanation from Thissen was always the same "the fee was too high" . . . "[Thissen] would shop¹⁴⁹ around with a number of consultants."

Around 1970, Thissen negotiated an employment agreement with four of the Desmond & Lord architects, including Mancuso. Mancuso testified that as part of the negotiations, the architects insisted on a greater role in the hiring of consultants because they wanted better consultants. According to Mancuso's testimony, one of the reasons Thissen gave for refusing to renegotiate the contract after a year was that he did not like giving up control over the selection of consultants.¹⁵⁰

There were no significant design deficiencies in the Desmond & Lord buildings at Massport. The large projects on which it served as a joint venture partner to a well known design firm, were particularly well received.

Thus, although Tarlow testified that architects who contributed to Peabody were awarded contracts only if they were also competent, the buildings Desmond & Lord designed pursuant to contracts awarded by that administration are seriously defective. The design errors in Desmond and Lord buildings are costly to the public who want to use them and to the taxpayers who paid to have them built and must pay again to have them repaired.

Fee Analysis

An analysis of fees paid to Desmond & Lord on all 37 BBC contracts within the Commission's mandate, suggests that the firm was well paid for its state work. In fact, for a number of projects, Desmond & Lord appears to have been paid more than would be expected if the usual fee calculations had been used. In order to understand the different ways in which the fees appear to have been increased, a brief explanation of the normal method of paying designers is necessary.

Standard Procedures

Ordinarily the architect's fee for a BBC contract is based on a percentage of the total construction cost of the building (or for the early stages prior to actual construction, of the estimated construction cost). A pre-established sliding fee scale is part of the BBC form contract. The percentage depends on the type and complexity of the building, as well as on the total construction cost. The more complex the building, the higher the percentage. Prior to January 1, 1974, buildings were divided into four groups: "A" - the least complex, for which fees are set at the lowest rate, to "D" - the most complex, for which fees are set at the highest rate. Since 1974, there have been five categories: from "I" the most complex to "V", the least complex. Within each category of building type, the percentage used to figure the architect's fee decreases as the total construction cost increases.

Thus, an architect is paid a higher fee for a more complex building, or a building with a higher total construction cost. Because the percentages and fee categories are based on a standard table, it is possible to determine whether an architect's fee is out of line: for example if the percentage is too high in relation to the construction cost, or if the building has been assigned to a more complex category than seems appropriate.

When a contract is awarded, the BBC sends the designer a "letter of intent" which informs him of the rate at which the fee will be calculated. Occasionally the BBC and the architect will disagree on the appropriate rate. Sometimes this dispute is resolved by using a rate which is a compromise between those established on the fee schedule.

For certain kinds of architectural projects, fees are calculated on a different basis, such as, a lump-sum, an hourly-rate, or a percentage that does not depend on the building type. Examples of such projects are renovations and fire protection.

In addition to a pre-established fee scale, BBC contracts also have a pre-determined, standard payment schedule. During the design phase, the architect is paid at the end of each stage of preparing the design documents. Payment during these stages is based on the estimated construction cost. The final payments for work during the construction phase of the project is based on the actual construction cost. The schedule permits one to determine whether an architect has been paid according to the usual schedule.

Desmond & Lord Analysis

The analysis of the 37 Desmond & Lord contracts revealed a number of ways in which the firm may have been overpaid for its design work. In several cases, the firm seems to have been paid at a rate which was higher than usual for other buildings of the same size and type.

Establishing Complexity

For example, the letter notifying Desmond & Lord that they had been awarded the contract to design the Bristol County Jail, instead of stating the rate of fee as is the usual practice, simply said that a fee of no more than \$400,000 would be negotiated. The invitation to negotiate is unusual.

Furthermore, the suggested upper limit for the fee was high. The normal fee for a county jail was the "B" rate. Based on the estimated construction cost of \$5,500,000, the percentage should have been 5.38 percent, or \$330,000. The \$400,000 figure is 7.27 percent of the estimated construction cost.

The fee which was ultimately negotiated was 7.2 percent. This figure was set in a letter from the BBC dated June 8, 1977, which also erroneously stated that the estimated construction cost was \$7 million. The terms of this letter therefore raised Desmond & Lord's possible fee to \$504,000. Because of litigation about the proposed site, this project has not yet been built and Desmond & Lord has been paid only \$31,490.*

In several contracts for renovation or fire protection of previously constructed Desmond & Lord buildings, the firm appears

* The litigation was recently decided in favor of the state. The project is expected to proceed under the direction of the BBC.

to have been paid more than the flat 10 percent usually paid for such projects. For instance, Desmond & Lord received the contract to renovate a classroom building at Framingham State College. The fee which the firm received for this work was 28.07 percent of the construction cost, rather than 10 percent, so that the firm received \$12,901.24 more than would have been standard for that kind of project.

On two large projects awarded to Desmond & Lord, the original notification provided for payment at the "B" rate. In both cases, Desmond & Lord immediately responded by requesting a change to the "C" rate. In one case the rate was changed to the "C" rate. In the other, the rate for the building itself was set at the "C" rate and the rate for the heating plant was set at the "A" rate. This method of calculating the fee resulted in higher fees than the firm would otherwise have been paid under the "B" rate.

In a third project, the original contract provided for compensation at the "B" rate. Two and a half years later, at Desmond & Lord's request, the contract was modified to change the rate of compensation from "B" rate plus two-thirds of the difference between the "B" rate and "C" rate.

Fee Calculations for Large Projects

Prior to 1965, the sliding scale in the BBC contract form did not provide for buildings over \$5 million. In 1965, a form with a scale up to \$10 million was adopted. By 1967, the form

included percentage figures for buildings up to \$15 million.

In some cases, the determination of the proper percentage fee for buildings whose estimated costs were greater than the highest figures on the contract form, appears to have been the source of some difficulty. The Commission staff examined all design contracts awarded between 1959 and 1967 whose construction costs placed the buildings off the end of the established scale. There were 10 such contracts, three of which were awarded to Desmond & Lord.

Of the seven which were not awarded to Desmond & Lord, five had fees in accord with the 1965 contract scale, even though the contracts may have been awarded prior to the establishment of that scale. The other two used the percentage for a \$5 million building, a practice that appears to be inconsistent with the established principle that the percentage should decrease as the cost of the building increases.

All three of the Desmond & Lord contracts for buildings over \$5 million also ignored this principle. In each case, the firm's fee was calculated at the rate appropriate for a \$5 million building. No provision for extrapolating the fee for a more expensive building was made. As a result, Desmond & Lord appears to have been paid close to \$350,000 more than would be expected for these three buildings.

Increased Construction Cost

Every time the estimated construction cost increases, the designer's fee increases, because it is based on the ECC. In

many of Desmond & Lord's projects, the ECC increased dramatically. In some instances it exceeded the final contract award. For example, the original ECC of the Boston Mental Health Center, on which payment of the fee for the working plans was based, was \$12 million. A year later, when the BBC was preparing to put the contract out to bid, at Desmond & Lord's request, the estimated construction cost was raised to \$17,430,000. On the basis of this new estimate, Desmond & Lord was paid an additional fee of \$48,000 for the working plans about six months later. When the contract was finally awarded the next month, the low bid was only \$16,654,000.

Finally, the increases in the construction cost of Desmond & Lord projects as compared with those of other architects, are striking. There were 13 Desmond & Lord contracts in which the final cost exceeded \$1,000,000. On these contracts, the average increase in construction cost was \$2,367,870.86, or 75.66%, from the time the project was awarded to Desmond & Lord, to the time the project was completed. These increased construction costs in turn increased Desmond & Lord's fee by an average of 71.05%, or \$1,918,061.44 for the 13 contracts. The combined total increase in construction cost was \$30,782,321.25 for all 13 of these contracts, bringing them from an original combined total cost of \$40,682,952.00 to a final combined total cost of \$71,465,273.25.

The Commission staff compared these Desmond & Lord contracts with a sample of similar contracts awarded to other designers by the Bureau of Building Construction between 1967 and the present.

There were six contracts for projects over \$1 million for which complete information was available. These contracts also show an overall increase in construction cost and designer's fees, but less than in the Desmond & Lord contracts. The average increase in construction cost was 24.8% (compared to 75.66% for Desmond & Lord's contracts). The average increase in designer's fee was 21.3% (compared to 71.05% for Desmond & Lord's contracts).

The smaller projects which Desmond & Lord handled did not show the dramatic cost escalation of the large projects. Although there were 23 of these smaller projects, they accounted, in the aggregate, for only 17.14% of the total compensation received by Desmond & Lord for all 37 contracts.

This analysis of fees paid to Desmond & Lord on projects within the jurisdiction of the Commonwealth's Bureau of Building Construction suggests that the Bureau has considerable discretion in calculating the fees paid to architects. In come cases, the fees awarded to Desmond & Lord were computed more generously than the fees paid to other architectural firms.

Political Influence

The Commission sought evidence from various sources in order to determine whether or not political influence was a factor in Desmond & Lord's success in receiving public work. Thissen testified before the Commission that he relied upon his personal relationships and the reputation of his firm to obtain design contracts for public work. ¹⁵¹ But there is no doubt that his relationship with executive and legislative office-holders included political contributions to their various campaigns.

He testified that he made political contributions on almost every occasion he was asked. Thissen stated: "I was generous to anybody that was running for office that I knew." ¹⁵² He told the Commission that he contributed to various candidates for:

- . Governor
- . Lt. Governor
- . Attorney General
- . State Senator
- . State Representative
- . Mayor of a large city

As discussed earlier in this report, Sherwood Tarlow, former Governor Endicott Peabody's fund raiser testified that Thissen was Peabody's largest contributor, and that he believed he could always count on Thissen to contribute ¹⁵³ \$1,000 if requested to do so. Thissen apparently also

contributed at least \$1,500 to former governor John Volpe as well, although he made the contribution in someone else's name.¹⁵⁴ And the fund raising records of former Governor Francis Sargent show that Thissen contributed at least \$500 per year between 1970 and 1974 to Sargent's campaign committee. Evidence assembled by the Commission indicates that Thissen also contributed to Governor Edward J. King's 1978 campaign.

This pattern of campaign contributions is similar to that practiced by almost every other design firm in Massachusetts which obtained significant state design contracts prior to 1975. These contributions appear to have assisted Desmond & Lord both in obtaining contracts and in receiving favorable bureaucratic action on its requests.

Method of Political Contributions

Thissen testified that he made contributions in three ways:¹⁵⁵

- (1) cashing a check at a bank and using the cash proceeds to purchase a cashier's or treasurer's check;
- (2) writing a personal check;
- (3) using a check signed by someone else.

In connection with the third method, Thissen testified that he would sometimes ask someone else "if they would mind if I use their name."¹⁵⁶ According to Thissen, if the person agreed, he would give the individual cash in exchange for that person's personal check.

The Commission's investigation disclosed that other firms doing business with the state also used these methods of making political contributions. Some of these cases are reported elsewhere in these Volumes.

Thissen's frank testimony about his contribution practices provides a dramatic example of the effect of years of neglect in the enforcement of the Commonwealth's campaign contribution law. Since 1946 it has been unlawful for anyone to make a campaign contribution that is not listed under the name of the true donor (c.55, §10).

Thissen also testified that he did not make any political contributions: (1) in cash,¹⁵⁷ or (2) from¹⁵⁸ corporate funds. Personal cash contributions below certain specified limits are permitted under Massachusetts law, although since 1973 the maximum has been \$100. Corporate contributions have always been prohibited. As part of its effort to investigate Thissen's campaign contribution practices, particularly as they relate to the award of state and county design contracts, the Commission performed a financial analysis of Desmond & Lord records.

Financial Analysis

As was the case for other firms investigated by the Commission, Commission financial investigators performed a financial analysis of the available books and records of Desmond & Lord. The materials which were produced pursuant

to summons on which the analysis was based included (1) checks drawn on the Desmond & Lord corporate checking account for the fiscal years 1968-1978 (Desmond & Lord's fiscal year runs from September 1 to August 31); (2) check stub books for fiscal years 1968-1974; (3) copies of the cash disbursement books for fiscal years 1976-1978 (none was available for fiscal year 1975); (4) some monthly statements of the corporate account.

The Commission also summonsed certain of Thissen's personal financial records. However, he refused to produce any of the required documents. Pursuant to summons to the banks where Thissen maintained his personal checking accounts, the Commission obtained copies of Thissen's monthly statements for these accounts. The Commission also obtained copies of selected checks paid from Thissen's personal accounts.

Cash Generation

As in the case with many of the firms investigated by the Commission, analysis of Desmond & Lord's available financial records showed substantial amounts of cash generation. This money was produced in one of three ways: (1) cashing checks written to Cash; (2) cashing checks written to Thissen; (3) cashing checks written to two Desmond & Lord secretaries, Jane Walsh and Mary Maloof,

It was the checks to Walsh and Maloof which became the focus of the investigation. These checks, which were routinely cashed, were in addition to their regular salary checks. The Commission had in other cases already identified large, non-salary checks to employees, which are cashed, as a standard procedure among design firms for generating cash for illegal purposes.

Mary Maloof, a secretary and office manager at Desmond & Lord for 30 years,¹⁵⁹ was named clerk of the corporation when it was incorporated, an office she continues to hold today. Maloof and Thissen have both testified that she was the only person other than Thissen who was authorized to sign the corporation's checks.¹⁶⁰ For many years she also kept the corporation's books.¹⁶¹ She testified that she issued checks and made corresponding stub entries only at Thissen's direction.¹⁶²

Jane Walsh worked as a secretary at Desmond & Lord for 13 years, until 1979.¹⁶³

In the years covered by the Commission's mandate, the corporation issued to Jane Walsh and Mary Maloof a number of non-salary checks which were cashed. These checks were written in amounts ranging from \$300 to \$4000. Often consecutively numbered checks drawn in identical amounts, and issued to the women on the same day were cashed on the same date. To attempt to trace the course of the checks,

the Commission summonsed the personal bank statements of Walsh and Maloof from the banks.

The bank statements of Maloof's and Walsh's personal accounts demonstrate that the proceeds of these checks were not normally deposited to their accounts as there are no deposits at or about the time the checks are cashed. Moreover, both women testified that while employed at Desmond & Lord, they took corporate checks issued to them, cashed the checks, usually at the firm's bank, placed the cash in an envelope, and returned the money to Thissen.¹⁶⁴ Maloof testified that she received her instructions from Thissen;¹⁶⁵ and Walsh testified that it was Maloof who told her what to do.¹⁶⁶

Some of the stubs for the Desmond & Lord checks to Maloof and Walsh are marked "bonus". Others bear no such marking.

In the years from 1968 to 1973, the check stub books reveal that the stubs of checks issued to Maloof and Walsh, as well as to Cash, also had names, initials, or abbreviations which appeared to be those of candidates for political office.

Examples of these transactions between 1970 and 1974 include:

Fiscal Year 1970

On January 30, 1970 Mary Maloof signed two consecutively numbered Desmond & Lord checks, one made payable to herself and the other made payable

to Jane Walsh. Each check was drawn in the amount of \$1,750.00, for a total of \$3,500.00. Both corresponding check stubs have entries which contain the name of a candidate for state-wide office. According to Maloof's testimony, she made the entries at Thissen's instruction. The Maloof check was cashed at the firm's bank. Walsh apparently endorsed her check and it was later negotiated at an out-of-state race track. Walsh testified she had no idea how the check came to be cashed at the particular race track. 167

On June 10, 1970 both Walsh and Maloof received consecutive Desmond & Lord checks for \$1,000.00 each. Both checks were cashed. The corresponding check stub entries set forth the words "Dem. State Comm.". Walsh testified she had no idea what the entry related to. Maloof testified that although Thissen told her to put that entry on the check stub, she did not know if it related to the Democratic State Committee or anything else. Thissen refused to respond to questions about these checks.

Fiscal Year 1971

On October 21, 1970 Maloof signed a \$2,500.00 Desmond & Lord check made out to herself. The check was endorsed by her and cashed at the firm's bank. The corresponding check stub entry contains the name of a candidate for state-wide office.

Again, on August 18, 1971 two consecutive checks were made out by Maloof to Walsh and to herself in the amount of \$500.00 each. They were endorsed and cashed by Maloof and Walsh. The corresponding check stub entries contain the name of a candidate for municipal office.

Fiscal Year 1972

On September 8, 1971 consecutively numbered checks were issued in the amount of \$750.00 each, one to Walsh and one to Maloof. Both checks were cashed. The corresponding check stub entries listed the name of a candidate for municipal office.

On September 27, 1971, consecutively numbered checks, each issued in the amount of \$1,250 were cashed. One check was payable to Maloof, the other to Walsh. The name on the check stubs is the same as the one listed on the September 8, 1971 stubs.

Again on November 1, 1971, consecutively numbered checks drawn in the amount of \$1,500 each were issued to Maloof and to Walsh. These checks, whose stubs bore the same entry as the two preceding pairs, were cashed.

On November 12, 1971, consecutively numbered checks, issued to Walsh and Maloof for \$1,500.00 were cashed. The corresponding check stub entries listed the initials which are the same as those of a candidate for state-wide office.

On May 10, 1972 and June 7, 1972, consecutively numbered checks, issued to Walsh and Maloof for \$500.00 and

\$1,750.00 respectively, were cashed. The corresponding check stubs shows only the check date and payee.

Fiscal Year 1974

On October 12, 1973, consecutively numbered checks, issued to Maloof and Walsh for \$1,000.00 were cashed. The corresponding check stub entries listed the name of a North Shore city.

On June 12, 1974, consecutively numbered checks, issued to Walsh and Maloof for \$1,350.00, were cashed. The corresponding check stubs show only the check date and payee.

Although Maloof testified that she drew the checks and made the check stub entries, she said in response to questions about each of these checks and their stubs that she had no idea what any of the notations meant.¹⁶⁸ She testified that she wrote the stub entries at Thissen's direction exactly as he dictated.¹⁶⁹ In a number of instances, she was unable to decipher her own handwriting in order to read the entry.¹⁷⁰ Jane Walsh testified that she had never seen the stub entries before.¹⁷¹

Some of the political figures whose names are the same as those appearing on the check stubs were interviewed or questioned under oath by Commission staff. All denied receiving contributions from Thissen.

The April Bonus Checks

Commission investigators determined that an annual "bonus" check to Maloof and Walsh, issued in April of these years approximated their additional tax liability based on the difference between their base pay and the amount of "bonuses" received.

For example, in 1971 fiscal year of the firm. Maloof was paid a net salary of approximately \$7800 after deductions. During that same period checks were issued to her in the non-salary category for a total of \$16,681.33. Of this figure \$7,550.00 of the checks were cashed. In April 1972 she received a \$7,679.48 check from the firm. Both testimony of Walsh ¹⁷² and staff investigation revealed that this check corresponded to the additional tax liability incurred as a result of the practice described above.

Checks to Cash

In each of these years, Desmond & Lord also issued checks to Cash. Example of stub entries associated with some of the checks issued to Cash and cashed by Desmond & Lord employees are as follows:

- Tickets for a gubernatorial fundraiser -
\$500.00
- Tickets for a Democratic House reception -
\$500.00
- Tickets for a Florida gubernatorial campaign -
\$1,000.00
- Democratic National Committee Dinner -
\$500.00

• State Senator Dinner Committee -

\$1,000.00

• Candidate for state-wide office -

\$3,200.00

Political Contributions in the Name of a Third Person

Jane Walsh

Jane Walsh testified that she remembered making two contributions at Thissen's request for which she was reimbursed with a Desmond & Lord check. She stated that the first of these was a contribution to a candidate for municipal office. She could not recall the specific year or the amount.¹⁷³ Despite an examination of the records, the Commission was unable to corroborate her testimony as to that particular contribution.

The second occasion on which Walsh remembers being reimbursed was a \$100 contribution she made to the Committee to Elect Edward J. King. Walsh testified that she made this contribution for a campaign dinner at Pier 4 at Thissen's request and that Desmond & Lord reimbursed her for her ticket.¹⁷⁴

Walsh's check to the King Committee was written on her personal account on December 1, 1977. On November 30, 1977, Desmond & Lord issued a check to Jane Walsh for \$100. This check was apparently cashed on December 2, 1977. The check was charged on the Cash Disbursement book as an "Off. Exp.", a term relating to an office expense disbursement. According

to Walsh, she attended the Pier 4 dinner with Mary Maloof.

Mary Maloof

Maloof also issued a personal check payable to the Committee to Elect Edward J. King in the amount of \$100. The check was dated November 30, 1977, the same day as the \$100 reimbursement to Jane Walsh. On the same day, a check in the amount of \$100 was written on the Desmond & Lord corporate account payable to Mary Maloof. The corporate check was apparently cashed by Maloof at the Commonwealth Bank & Trust Co. on the day it was issued.

Corporate records show that the \$100 check to Maloof was also recorded as an "Off. Exp.". Maloof testified that she does not know what the expense or the one concerning Walsh relate to. She denied that it was a reimbursement for the King contribution.¹⁷⁵ She also testified that in spite of the entry "Off. Exp." in the Cash Disbursement book, she thought the check to her was a bonus.¹⁷⁶

In the next six months, Maloof made two additional contributions to the King campaign, each in the amount of \$500. On January 31, 1978, Maloof drew a check on her personal account in the amount of \$500 payable to the Committee to Elect Edward J. King. A Desmond & Lord corporate check payable to Mary Maloof in the amount of \$500, dated January 31, 1978, was deposited in Maloof's personal account the next day, February 1, 1978. This check was charged on the Cash Disbursement book to an account entitled Employee Expense.

Maloof testified that there was no relationship between the \$500 contribution and her receipt of the \$500 check from Desmond & Lord on the same day.¹⁷⁷ According to her testimony, her best memory is that she was not reimbursed.¹⁷⁸

On May 30, 1978, Maloof drew another check on her personal account payable to the Committee to Elect Edward J. King, again in the amount of \$500. A check issued on the Desmond & Lord corporate account on the same date, May 30, 1978, payable to Maloof in the amount of \$500 was deposited in Maloof's account on May 31, 1978. This check was charged as a bonus on the Desmond & Lord records.

Thus, in the six months between November 30, 1977 and May 30, 1978, at a time when she was earning after deductions a net salary of approximately \$7,800, Mary Maloof contributed a total of \$1,100 to King's campaign committee. On three different occasions over six months Mary Maloof made contributions to the same candidate for governor from her personal account and on the same day of each contribution a check from the Desmond & Lord corporate account was written to her for the exact amount of her contribution.

Maloof testified that she was not reimbursed for these contributions.¹⁷⁹ She also testified that she would have made the contributions even if she had not been reimbursed.¹⁸⁰

Massachusetts law prohibits direct and indirect corporate contributions,¹⁸¹ and also prohibits contributions not made in the

name of the true donor. The Desmond & Lord records available to the Commission show the reimbursement checks in question as having been charged on the Cash Disbursement book as an "Off. Exp." (Walsh - \$100), as an "Office Expense" (Maloof - \$100), as an "Employee Expense" (Maloof - \$500), and as a Bonus (Maloof - \$500), characterizations which would enable the corporation to deduct the expense from income.

It is possible that at the end of the respective tax years, the Walsh \$100 and the Maloof \$1100 could have been accounted for in some different manner in Desmond & Lord records. However, both the corporation and its accountant refused to produce any of the records which would have revealed the manner in which these checks were expensed.

Furthermore, no matter how the checks were expensed, the contributions would still violate the law. Even if they were ultimately charged to Thissen's personal account, the contributions would be illegal for not having been made in the name of the true donor. If, as the records inspected by the Commission show, the reimbursement checks were charged as described on the books of Desmond & Lord, they are illegal indirect corporate contributions by this firm. Under the ordinary business practice of this firm such disbursements were authorized by Thissen.

This conduct by Thissen in late 1977 and 1978 demonstrates his willingness to use corporate funds for political contributions and to attempt to disguise this fact by engaging the participation of Walsh and Maloof, and employing false bookkeeping entries. The Commission finds this evidence consistent with and probative when considered with the results of the Commission's examination of the firm's bank records and check stub entries from 1970-1974 as described above.

The Commission received no evidence showing that Governor King or any member of his Campaign Finance Committee knew of the true source of these contributions.

Sepp Firnkas

Sepp Firnkas, owner of Sepp Firnkas Engineering, Inc., which was the structural consultant on a number of Desmond & Lord buildings, stated in an interview that Thissen regularly asked him to make political contributions. According to Firnkas, he complied with Thissen's requests on several occasions. These contributions drawn on his personal account were in amounts of \$100, \$150, or \$300. Firnkas remembers that Thissen reimbursed him for part of the \$300 contribution by adding \$100 to Firnkas' fee.¹⁸².

Alphonse Mancuso

On at least one occasion, Thissen apparently submitted a contribution in someone else's name without consulting him. Alphonse Mancuso testified that during the 1960's, "a local newspaper, Waltham News Tribune carried on the front page a story, 'area man [Mancuso] gives biggest contribution

to Volpe', and I assumed that Mr. Thissen did it, and I went in and said to him, "if you did that don't ever do a thing like that again."

According to Mancuso's testimony the contribution was for \$1,500. "I just figured it must have been (Thissen) . . . because I couldn't imagine any other way that that could have happened."¹⁸³

Mancuso testified that "(Thissen) just said okay, and heard what I had to say, and I was emphatic and that was the end of it." According to Mancuso, he believed that Thissen had made the contribution in his name and that a communication to Thissen was sufficient to handle the situation.¹⁸⁴

Conclusion

In the years covered by the Commission's mandate, Desmond & Lord, a firm which received a particularly large number of public design contracts from the Commonwealth, was owned by David Richard Thissen, Jr. In his testimony before the Commission, Thissen acknowledged making political contributions to almost every candidate who asked him, particularly candidates for state wide office. The financial records of the firm reflect some of these contributions.

Thissen also cultivated the state agency which had jurisdiction over these contracts. He described his approach to obtaining design work in the following terms: "It is like a salesman selling anything. I would go up there and represent anything I thought I could do to help me get the job."¹⁸⁵

Clearly, Thissen is a good salesman. His success in obtaining for his firm contracts to design public buildings brought Desmond & Lord millions of dollars of fees paid with taxpayers' money.

However, many of the buildings Desmond & Lord designed have not provided the taxpayers or the buildings' users with a fair return on this investment. The design failures frequently are associated with Thissen's efforts to pay his structural consultant as small a fee as he could nego-

tiate, while at the same time negotiating the most generous fees possible with the BBC for his firm.

The Commission has proposed administrative reform to create a system of awarding design contracts which does not depend on salesmanship or result in favoritism. The Commission hopes that these reforms, in combination with the public financing of political campaigns which it has also proposed, will establish a climate in which the public receives the buildings for which it pays.

DESMOND & LORD TABLE 1: BBC PROJECTS

Cape Cod Community College EJ64-4

	<u>Designer Fee's Received</u>
1A Classroom & Science Building	\$226,906
1B Library & Administration Building	134,701
1B- Site	43,077
1C Commons Building	111,171
1D Gym & Maintenance Building	126,759
1E Site Lights	8,924
1F Top Paving - Roadway, Parking	6,690
1G Lecture Hall	111,293
1K Landscaping	27,012
4 Dental Lab	9,750
5 Site Work	10,296
6 Sprinkler - Auditorium	4,941
EJ75-10#1 Renovations - Handicapped	13,430
C.C.C.C. Total	<u>\$834,950</u>

Southern Massachusetts University

SM75-2(H) #1 Renovations - Handicapped	\$ 12,570
E67-7#1 Fine Arts Building	301,113
E61-4#4 Science & Engineering Building	454,636
" #13 Television Equipment	19,500
" #11 Sewage Holding System	5,821
" #10 Student Union Building	18,000
" #12 Learning Lab Equipment	5,709
" #6 Textile Technology Building	106,700
" #18 Fire protection	3,100
" #9 Library Communication Center	455,352
" #5 Auditorium & Administration Bldgs.	265,199
" #2 Power Plant	73,365
" #3 Classroom Building	206,702
SMU Total	<u>\$1,927,767</u>

Lowell State College

E66-5#2 Renovations	5,000
" #97 Science - Classroom Building	258,896
Total	<u>\$263,896</u>

Mass. College of Art

E65-9 New College (Terminated)	\$ 17,711
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Training Treatment Research Center

M64-15	\$1,169,285
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Bristol County Jail

CBR73-1 (still active)	31,490
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Institute of Labs

H64-1	Lab	\$ 887,690
H64-1#2	Power Plant	2,472
	Total	<u>890,162</u>

Framingham State College

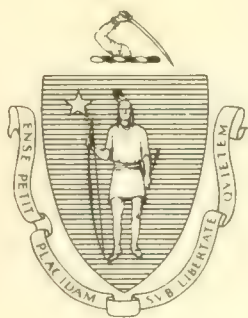
E63-7 #1	Library, Classroom building	\$ 168,522
" #3	Renovations	20,038
" #4	Fire Protection	2,500
	Total	<u>\$ 191,060</u>

DESMOND & LORD TABLE 2: MASSPORT PROJECTS

<u>Project No.</u>	<u>Description</u>	<u>Total Fees Received</u>	
<u>Desmond & Lord Projects</u>			
1.077	Allegheny Airline Hangar	\$ 242,483.26	
1.087	Wood Island Sub-Station	6,051.17	
1.096	Expansion Satellite S.W. Terminal	43,296.03	
1.102	Heating plant Addition	25,288.72	
	Total		317,119.18
<u>Desmond & Lord/Kubitz & Pepi Projects</u>			
1.075	Volpe International Terminal	1,296,360.16	
1.113	Volpe International Terminal Roadways and Parking	46,679.51	
1.130	Volpe International Terminal Customs Counter	3,500.00	
1.131	Volpe International Terminal Food and Beverage facilities	13,781.69	
	Total		1,360,321.36
<u>Desmond & Lord/John Carl Warnecke Projects</u>			
1.079	South Terminal I	2,227,500.00	
1.088	Temporary South Terminal	199,723.95	
1.120	South Terminal II	2,185,584.95	
1.094	Expansion of Parking Garage	206,588.55	
1.095	New Control Tower	421,441.43	
1.120 A	Switchgear Equipment Prepurchase	4,318.38	
1.120 B	Emergency Generator Prepurchase	2,811.78	
1.136	Triturators	38,400.00	
1.137	Signing & Graphics-South Terminal	49,011.08	
1.150 R	Completion of Triturators	6,733.00	
	Total		5,342,112.35
	Grand Total		<u>7,019,552.89</u>

The Commonwealth of Massachusetts

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Final Report To The General Court Of The Special Commission Concerning State And County Buildings

December 31, 1980

Created by
Chapter 5 of the Resolves of 1978
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VOLUME 5

SUPPLIERS

INFLUENCE EXERCISED ON ADMINISTRATIVE AND LEGISLATIVE ACTION

LAUNDERING IMPROPER CAMPAIGN CONTRIBUTIONS

CASH GENERATION AND CASE STUDIES

VOLUME 5

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SUPPLIERS

INTRODUCTION

In a public hearing on May 14, 1980, William Masiello opened the topic of suppliers and subcontractors with the statement:

This is actually where the large amounts of corruption begins [sic]...what in essence [we] were doing were [sic] bid rigging and stealing, really outright stealing.¹

The testimony that followed outlined a system in which contracts for construction materials and services were conferred on those who were willing to pay for them, either with cash or free goods or some equivalent, with the cost of kickbacks being added to the project, and ultimately passed on to the taxpayer.

As explained elsewhere in this report, state building construction is ordinarily carried out by a general contractor hired by the commonwealth after competitive bidding. Each general contractor, in turn, contracts with numerous subcontractors and suppliers who provide components of labor or materials for the project. Some of these contractor-subcontractor relationships are the result of formal, competitive filed sub-bids, required by statute and solicited by the administering agency before the submission of general bids. Others (which will be referred to as nonfiled sub-bids) are simply determined informally when the general contractor, in formulating his bid, calls upon various specialists in search of the best price and the highest reliability. In either case, the supposed aim is to provide the labor and materials which will most closely fulfill the specifications at the lowest cost to the Commonwealth.

William Masiello testified that, by the time he assumed ownership of Masiello and Associates in 1972, he had been indoctrinated in the methods by which a project's architect could influence, or even control, which subcontractors or suppliers (hereinafter, simply "suppliers") were chosen by a general contractor for the project.² He then detailed how this power allowed him to collect thousands of dollars and improve his own property, and others', at public expense.*

THE METHODS

Specifications

Ordinarily, it is the architect or draftsman who draws up specifications for various components of a building project. These specifications are usually

*In this section of the report, William Masiello will sometimes be referred to as an architect for the sake of convenience; in fact, he is not an architect, but was, rather, the owner and defacto manager of an architectural firm. Strictly speaking, it is the firm, in particular the employees who were architects, who carried out the duties of architect at his direction.

dictated by considerations of budget standards, program needs, aesthetic judgment, and physical properties. (For example, the specification of a floor covering will depend on the money available for that part of the building, the amount of traffic expected on the floor, what covering is visually pleasing and in harmony with the surroundings, and what will wear best or be easiest to maintain.) It is ordinarily expected that these judgments are made by the architect, with the client's needs and preferences in mind.

Ordinarily, specifications must outline several alternatives so that they can be met by more than one manufacturer or supplier, and allow for competition (M.G.L. c.30, s39M(b)). For example, rather than specifying a "Cadillac," which is only manufactured by General Motors, the specification would have to say, "Cadillac or equal," which would, theroretically, allow Chrysler Motors or Lincoln Mercury to send in their prices for Imperials or Continentals in competition with the General Motors bid.

This statutory requirement is qualified, however, and in certain instances permits specifications to be worded more narrowly for, "sound reason in the public interest." The resultant specification is called a "proprietary specification," meaning it can only be met by one manufacturer's product. Technically, this kind of specification is only used where there has been investigation (presumably by the specification writer) and the awarding authority can justify, in writing, its decision to restrict bids to one manufacturer. Possible justification would be that the manufacturer in question makes a unique product, with features or quality not present in imitations of the product, and that those features are necessary or desirable in the project being built. For example, a specification might require, "windows manufactured by Company A," because only Company A makes windows with built-in weatherstripping, and energy conservation and low maintenance is desirable in the project, and is in the public interest.

In the past, requirements were even less stringent on county projects where specifications were not as closely monitored.

The Commission's investigation found that, in some public construction projects, specifications were drawn by people other than the architect, and/or with different considerations than those outlined above. For example, the specification writer in the Masiello firm, Joseph V. Miller, testified that at the direction of William Masiello, he often had specifications drawn up by the suppliers themselves.³ Norman Chaleki, who preceded Miller as specification writer at the Masiello firm, also testified that he was asked (by Frank Masiello) to write specifications that would favor certain suppliers by contacting the supplier and getting product descriptions and incorporating them in the specifications.⁴

A plausible rationale for allowing a supplier to write the specifications is that one who is experienced in dealing with a particular kind of product is in a better position to know and outline the characteristics of that product, and to make intelligent choices between products. However, when a supplier's advocacy is substituted for the architect's independent judgment, the end result may be inferior materials or inflated prices, or both, due to elimination of competition. (In the Masiello case, the architect's judgement was usually based on factors other than product quality or the project's needs, namely on which suppliers were willing to pay to get the contract.)

As testified by Miller, the advantage (to the supplier) of writing specifications would be that characteristics of the supplier's own line of materials would be written into the specifications, and would make it easier and cheaper for him to satisfy them, and would discourage a general contractor or a competing supplier from trying to use materials that would have to be justified to the architect as being equal.⁵

One hardware supplier who participated in such a scheme with the Masiello firm was questioned under oath about the practice of writing specifications for architects. He testified that his firm wrote specifications for firms other than Masiello,⁶ and that there existed a "loose agreement" among suppliers in his trade that the one who wrote the specifications would not receive competition from the others on the products so specified.⁷ A landscaper who appeared before the Commission testified that he wrote specifications for Masiello using certain species or varieties that might be harder for other suppliers to obtain.⁹

In sum, investigation of Masiello-designed projects disclosed a pattern whereby architects and suppliers were able to pre-determine awards of supply contracts by providing for supplier participation in the specification process.

A function related to the drawing of specifications is the computation of an approximate estimate for the specified materials and labor. This estimate is ordinarily provided by the architect to the state agency administering the contract to serve as a rough guideline in the appropriation of funds, in the bidding process (for example, to set the amount of required bid deposits, or to serve as a ceiling on bids), and in setting allowances (see the section on Allowances, below).

Again, the Commission's investigation disclosed that, in projects designed by the Masiello firm and others, the supplier, rather than the architect, set the estimate. Norman Chaleki testified that usually the supplier provided the number,⁹ and Irving Marcus, a hardware supplier, testified that he furnished prices for preliminary estimates whenever an architect so requested; he also

stated that other architects used such estimates to the same extent that the Masiello firm did.¹⁰ William Masiello's testimony confirmed this practice.¹¹ The legitimate reason for this was the supplier's familiarity with the products. However, as discussed below in the sections on Filed Sub-bids and Allowances, these estimates could also be the subject of manipulation, with the consequence of being a reduction in competition, inflated prices, or both.

Non-filed Sub-bids

In most construction projects, general contractors call a number of suppliers, familiar to them through experience or by name, to ask for prices on items to be covered in his bid. Suppliers arrive at their bid prices by viewing the plans and specifications and then calculating their prices for the specified items. The suppliers' prices (bids) are then considered by the general contractor for inclusion in his overall bid. Normally, a general contractor will want to include the lowest possible prices in his own bid to increase his chance of being the lowest bidder and winning the contract.

In the system described by William Masiello, he was able to coerce general contractors into selecting his friends as suppliers by requesting that they obtain prices from his friends before compiling their bids. Specifically, he testified that he influenced them to use a particular supplier by asking that they give that supplier a "last look" at the specifications and competitors' prices, and a chance to bid before making the final decision on whom to select.¹² In this situation, it was unnecessary for Masiello to explicitly order the general contractor, or threaten him; the contractor knew that, if he was awarded the contract, almost everything done pursuant to the contract would be subject to the architect's approval. Failure to obtain approval -- for compliance with the specifications, for change orders, or whatever -- could cost the contractor time and money; thus, it was only prudent for a general contractor to heed the architect's request. As Masiello put it: "The architect is God."¹³

For the supplier's part, there were two requirements: to obtain the architect's intervention through friendship or promise of payment; and to quote, to the general contractor, a price low enough to induce him to include it as part of his overall bid. In the case of a supplier favored by Masiello, satisfying the former made the latter possible. Specifically, if, for one reason or another, Masiello had an interest in seeing him get the contract, the supplier knew that Masiello would allow him to cut corners and not meet the specifications which other bidders would be expected to meet. It was understood that, once the supplier got the job, Masiello would approve nonconforming materials or work,

saving the supplier money. This understanding allowed a supplier to undercut competition and also to have enough money left from the contract price to pay the promised kickback.¹⁴ An illustrative case, taken from testimony, will be discussed further along in this text.

Similar to the architect's power to approve cheaper substitutions (allowing the supplier to make a larger profit) was his power to approve change orders, increasing the supplier's fee; this device was sometimes used even when there was no actual change in product or cost, and resulted in a higher supplier's fee which funded a kickback.¹⁵ Again, the architect's leverage could force a general contractor to go along with such a change order, particularly since the scheme would not adversely affect his profit, and might even push it upward.

Finally, a supplier quoting a price to the general contractor usually had the advantage, discussed in the previous section, of having written the specifications.

Filed Sub-bids

By statute (M.G.L. c.149), the general contractor must select some suppliers through a state-administered filed sub-bid process, which limits his discretion to pick his own supplier. Instead, he must choose among those bids filed with the state and not specifically restricted from his use. Bidders are attracted through public advertisement.

Testimony and research on Masiello-designed projects disclosed how even a highly-regulated procedure such as filed-sub-bidding could be (and was) subverted to direct subcontracts to certain people. Norman Chaleki testified that sub-bids are accepted or rejected by the BBC (or other awarding authority) at the recommendation of the architect; possible grounds for rejection are when all bids are too high above the preliminary estimate, or when fewer than three bids are received.¹⁶ Thus, even this procedure can be subject to intervention by the architect, particularly if the state official administering the bids is likely to defer to the architect's wishes without questioning the underlying reasons for the overbids or lack of bids, or if he applies criteria inconsistently.

In at least one case reviewed by the Commission, the administering agency (the BBC, probably through Frederick Kussman) apparently did not reject bids or re-bid when only one bid for metal windows was received; instead, a subcontract for \$289,982 was awarded to the sole bidder.¹⁷ By contrast, in another contract within the same project, P61-1 #9C, the BBC rejected all bids for metal windows when fewer than three bids were received, and later re-bid that part of the contract (eventually awarding it to one of two bids received).¹⁸ The records show no apparent justification for the inconsistency.

A possible explanation for a lack of bidders was furnished by Norman Chaleki. He testified that:

It could be just the fact that if specifications were prepared so tightly around one manufacturer that other manufacturers weren't prepared to spend the time or effort to comply with [them] or change their products to comply with the specification.¹⁹

He also confirmed that an architect who wanted the filed sub-bids to be rejected could simply set the preliminary estimate for the subcontract so low that legitimate bids would almost certainly exceed the estimate and have to be rejected.²⁰ As explained earlier (see the section on Specifications, above), the Commission found it to be a widespread practice for architects to have friendly suppliers dictate the specifications and set preliminary estimates. Thus, it has happened that the very people intended to be regulated by statute and subjected to competition in product and price -- the suppliers -- have often subverted that process simply by gaining access to architects. As will be described further along in this text, the means to that access was usually some form of payment.

Finally, when competition has been frustrated by the rejection of bids, the usual result is the insertion of an allowance (a process explained below) which presents fresh opportunities for contract manipulation.

Allowances

At times during the bidding process and contract award to the general contractor, certain components of the building are not sent out for bids, or no bids are accepted. Reasons for not bidding may vary, the most usual being that the specifications for some of the finish work (e.g., landscaping, office furnishings) are not complete at the time for sub-bids and general bids, or the component is one (e.g., bricks) whose price fluctuates and which is not immediately needed; reasons for rejection of sub-bids are given above in the previous section. When, for whatever reason, no bid is accepted for a given component, an allowance is inserted into the overall construction price; that is to say, each general contractor is told to insert a given sum for the component into his overall bid. Because each general bidder inserts the same sum, it does not change one's competitive standing in the bid process; it simply is a sum which is set aside in each overall bid to pay for the component. The amount of the allowance is usually the architect's preliminary estimate of the cost of the component.

Later in the construction process, bids are solicited for these items and awarded, and the general contract price is adjusted to reflect the difference between the allowance price and the price in the accepted bid. This postponed bid process is usually administered nominally by the awarding authority. In some instances, however, especially county projects, the Masiello investigation

revealed that it was actually administered by the architect with little or no supervision, and the awarding authority simply rubber-stamped the recommendation of the architect.²¹

William Masiello testified at some length about how he and just one supplier "ripped off" the county of Worcester in excess of \$100,000 through use of the allowance system, padding and rigging bids.²² He went on to estimate that he had overcharged approximately \$250,000 total on public contracts through the various schemes he used with suppliers,²³ outlined above.

Norman Chaleki testified that the Masiello firm used the allowance device much more than other firms,²⁴ and that the procedures used in the firm to award supplier contracts were so lax that the contracts were not always advertised, there were not always three competitive bids and, when there were, they were often arranged by one supplier²⁵ (who had "rigged" them with other suppliers).

In his public testimony, William Masiello elaborated on the process by which he and suppliers used allowances to generate money, passing the expense onto the public agency, and ultimately the taxpayer. He stated that he always had the supplier write the specifications, and then he and the supplier got together and figured out the actual cost of the job. Then they would escalate the figure by the amount of money they wanted for themselves²⁶ -- often on the order of 40 percent of the true cost -- with the excess being split between them (as in the Iaccarino millwork contracts, detailed below)²⁷ or going solely to Masiello.²⁸ This figure would be given to the administering agency and to the general contractors to use as the allowance price.

When the time came for the contract to be awarded, competition was restricted by several methods. Usually requests for bids were not publicly advertised,²⁹ or, if they were, they were published in a local paper outside of Boston, with a relatively small circulation, on slow-readership days, such as Monday and Friday mornings.³⁰ Meanwhile, Masiello or one of his employees asked the favored supplier for 2 other firms (besides his own) to whom the specification should be sent for bidding, so that at least 3 bids would be received and considered. The favored supplier responded with the names of other suppliers with whom he could arrange to be the lowest,³¹ either because they were friends who did so reciprocally, or they were different entities controlled by the same supplier (wholesale and retail, or stores with different names owned by the same person), or the supplier had access to the stationery of firms, other than his own, on which he could draw up a phony bid.³² Ordinarily, one of Masiello's employees sent specifications to the suggested firms; however, there were occasions when the favored supplier brought in all three bids,³³ which had been put together without regard to specifications, but simply drawn up among friends arbitrarily.

The bids were sent or hand-delivered to Masiello's offices where they were opened and usually, to no one's surprise, the favored supplier was the low bidder.³⁴ On one occasion, which will be discussed further on in this text, the favored supplier was not the low bidder when the bids were opened, and William Masiello had the supplier draw up a new bid, on the spot, lower than those which had been opened³⁵ so that he would get the contract.

After opening the bids, someone at the Masiello firm customarily wrote to the awarding authority, outlining what bids had been received and making a recommendation for the award of the contract. The recommendation was usually that the lowest bidder receive the contract. Occasionally, where a proprietary specification was used, the favored supplier was not the low bidder. The architect, in this situation, would have to justify the recommendation of the favored supplier; the letter of recommendation would explain why the products of the lower bidders did not, in fact, meet specifications, and were inferior or undesirable. In this manner, the architect was able to channel the final choice of the awarding authority even toward someone other than the lowest bidder. It appears, from documentation, that the awarding authority relied heavily on the architect's recommendation. The Commission staff examined all available examples of Masiello contract recommendations and subsequent awards made by the Worcester County Commissioners, and found no instance in which Masiello's recommendation was not followed. Although the documentation did not cover every bid award, it was sufficient to evidence a clear pattern.

One likely reason why the Commissioners followed the recommendation was that the bid involved was nearly always less than the allowance amount, and, thus, it may have seemed to them that money was being saved. As William Masiello testified:

...when I went into the county commissioners and gave them a credit of \$2000 I looked good. If I told them it was plus \$2000 they would argue it.³⁶

Form of Kickbacks

The end result of contract manipulations, such as those outlined above, is an inflated price, sometimes accompanied by shoddy workmanship. The money paid by the public agency, but not used in the actual building, was diverted in a number of ways, some of them quite ingenious, from the supplier into the pockets of the supplier, the architect, and public officials. Often the money was not kicked back in the form of cash, but in kind:

What he did were services in and around my home. He completely...renovated my home...added on a new room, put in all wall to wall carpeting. He also added an addition to one of my employee's homes. He also completed the offices [of my firm] in excess of \$20,000. He also built new offices [in another

building]. I would say between [the supplier] and myself, and I am going to use the word ripped off, that is what everybody understands, the County of Worcester in excess of \$100,000.³⁷

In the course of its hearings, the Commission received testimony from a number of individuals, relating to the various forms and methods of the kickbacks they paid, which are outlined here and described more specifically further along in this text.

(1) The supplier simply generated cash out of his firm after being paid for the project, and gave the cash to the architect who had helped him get the job. The architect either kept the money, or gave it to, or shared it with, the public official(s) who, in turn, had helped him get the project.

(2) The supplier generated cash by writing checks to intermediaries who, in turn, cashed the checks and gave the architect the money. Often the motivation for using an intermediary was twofold: to better disguise the transaction on the books, and to use an intermediary for which payments are tax deductible (e.g., attorney, accountant, consultant, employee). In one case, a witness admitted creating an imaginary subcontractor, "Robert Award," to whom he wrote checks, which he cashed and passed on to an architect who had favored him with contract awards.³⁸

(3) At the architect's suggestion or direction, suppliers made direct contributions to public officials, or their campaigns, by cash or check.

(4) The supplier used the extra profit to pay for materials and/or labor -- ranging from two dozen hockey sticks, to rhododendron bushes, to entire home additions and furniture -- provided to the architect or public official free of charge.

(5) The supplier applied the extra profit against outstanding indebtedness owed him by the architect on unrelated transactions.

(6) The supplier, at the architect's direction, paid cash or laundered checks to others who were owed money by the architect.

The suppliers who testified reiterated the same reasons for their largesse, exemplified in the following statement taken from a landscaper's testimony:

A. ...It was predetermined this would be done...

Q. Why did you go along with this method of setting the allowance price and administering the contract?

A. Well, I felt that was a way I would get the work.

Q. Were you ever told, that if you went along, you would get the contract?

A. That's what is was all about. Right.³⁹

Case Studies from Investigations and Testimony

A. Millwork: Ralph Iaccarino and Sons Lumber Co., Inc.

(1) The trade: Millwork constitutes those building elements which are made of wood or wood products, permanently affixed to the structure and which are exposed when the building is in its finished state: railings, cabinets, molding, shelves, panelling, counters and doors are several examples. Although it may comprise a substantial portion of the building price, in public projects in Massachusetts (state and county projects) millwork is usually included in the contract price paid to the general contractor and not administered as a separate, filed sub-bid. Most millwork is custom manufactured by the supplier for a particular project, as opposed to being part of a prefabricated, standardized product line. For this reason, millwork specifications cannot be drawn to favor a particular supplier's existing product line.

Because millwork is a "nonfiled" sub-bid and specifications at least nominally allow for open competition, a general contractor has considerable discretion in choosing a millwork supplier, constrained only by the desire to keep prices low, and by fulfilling the specifications to the architect's satisfaction. Such discretion creates opportunities for exertion of influence by an architect. This was amply demonstrated when William Masiello testified at length before the Commission about his success in channeling millwork sub-contracts in those projects designed by his firm to the Ralph Iaccarino and Sons Lumber Company.⁴⁰

(2) The firm. Ralph Iaccarino and Sons Lumber Company, Inc. (hereinafter, "Iaccarino") is a millwork firm now located in Boylston, Massachusetts (formerly in Worcester). The company was started in 1927 by Ralph Iaccarino, who became ill around 1955 and ceded control to his sons, Joseph and Carl. The firm was incorporated in or about 1964. Around 1971, the year Ralph Iaccarino died, Joseph became ill with multiple sclerosis, and management of the firm passed to Carl. Carl Iaccarino currently is president and sole owner, and his sister, Michelina Fulginiti, maintains the internal financial records as comptroller;⁴¹ William Martellotta is the project manager, supervising production and drafting.⁴² The company's annual gross income 1971-77 ranged from \$665,355 in 1971 to a high of \$1,260,945 in 1976, and it employed 56-75 people during that period.⁴³

In an interview with Commission staff, Carl Iaccarino stated that the firm did little public work in its earlier years. When Frank Masiello (whom Carl knew from high school) opened his architectural office in Worcester in the late

1950's, however, he urged the Iaccarino brothers to try bidding on public projects and helped them learn the procedures for bidding on public contracts, according to Carl Iaccarino. Since then the firm has prospered.⁴⁴

Indeed, a list of projects performed by the Iaccarino firm since January 1, 1968, which was produced by the firm in response to a Commission summons, includes 652 projects, the overwhelming majority of them public, and over half of them (about 346) public projects in Massachusetts. (See list in Appendix 12.)

(3) Scope of Study. The research performed by the Commission staff only encompassed a small fraction of the listed projects. Many projects were done for the federal government and local governments, whereas the Commission was mandated to concentrate on state and county contracts. Another impediment was the lack of project documentation provided to the Commission by the firm; of fourteen project files requested, only seven or eight were produced,⁴⁵ and not all public agencies involved in the projects were able to fill in the gaps from their records. Finally, the volume of firms being studied and the limited time allocated to the Commission made a lengthy audit of each individual firm impossible.

Despite these limitations, however, the Commission obtained enough information from documentary research, interviews and testimony to detect a pattern of operation on those projects designed by the Masiello firm which used the products and services of the Iaccarino company. Among the projects studied were five courthouses in Worcester County (Milford, Uxbridge, Westborough, Dudley, and Gardner), the Worcester County Jail, the Mass. Correctional Institution at Concord, and Holyoke Community College. The Commission staff analyzed bid documents and selected change orders, and performed an audit of the Iaccarino firm encompassing 1968-1977, concentrating on 1971-77.

(4) Investigative results:

(a) How the contracts were awarded: William Masiello, when first questioned in public about his role in the award of supply contracts, described his dealings with the Iaccarino firm as typifying "the large amounts of corruption."⁴⁶ He outlined in particular the manner in which he and Iaccarino used the allowance system on Worcester County projects to divert tens of thousands of tax dollars for private use:

I am talking about county contracts, city contracts, contracts that were not closely observed...we would put an allowance item...I would overstate it...Between Mr. Iaccarino and myself, we would predetermine how much the furnishings would cost on a particular courthouse. He would give me a figure. What I would do with that figure is I would escalate sometimes 12, 13, 14, \$15,000. Then what we would do is I would send a predetermined series of bids out to those people suggested by Mr. Iaccarino...I or...one of the other members of the

[Masiello] firm would send out these bids [from] the listing that I submit[ted] to them. Now, when the bids came back naturally Mr. Iaccarino was the low bidder, and he or I would know that there would be whatever, [in] most cases it was in excess of \$12,000. He would submit...a bid that would be under what we had allowed... The deal between us is that he would tell me what the costs were going to be. If it was \$22,000 and we submitted the bid for \$38,000, the difference between [the two], \$16,000, he would get eight and I would get eight.

Now, I never got any cash from Mr. Iaccarino. What he did were services in and around my home...an addition to one of my employee's homes...completed the offices...built new offices...

I might interject...I always took them for their word. If Mr. Iaccarino came in and said to me... it was \$22,000, it could have been \$12,000...He could have already had his profit built in. All I knew is what he told me...[At] the Elm Park Community School in Worcester, Mr. Iaccarino, I believe, told me that it was going to cost his firm \$70,000 to perform the services...There wasn't even a bid involved...he told me it was going to be for \$84,000, that we were going to split \$14,000...I later found out through the general contractor that he [the general contractor] could have performed the same services for \$54,000, so even amongst crooks there is no honesty.

Q. ...You have got to make sure that in the case of Iaccarino that his bid is low[est], and since he wants an inflated price in there you have got to make sure you control the amount of the other two bids if you are going to have three bids?

A. That's correct.

Q. He would supply the names of the other firms and you would send them...a notice...and they would come in higher than Mr. Iaccarino?

A. That is correct.

Q. So, whatever happened between Mr. Iaccarino and them, something must have happened to make them bid above [his] price even with the inflation in there?

A. You will have to take that up with him and his friends.

...I didn't invent the system. The system was there when I got there. People like Mr. Iaccarino...showed me how the system worked and all I did was improvise, I believe.⁴⁷

William Masiello went on to give several examples of projects in which he and Iaccarino made such pacts. He recalled specifically that the millwork bid for the Dudley Courthouse (in Worcester County) was \$38,000 and that the actual cost was \$26,000, with the extra \$12,000 being split evenly between himself and Carl Iaccarino; he recalled approximately the same allocations of money in the Westborough Courthouse project.⁴⁸

Masiello's recollection was at least partially corroborated by documentation. Commission staff was able to obtain copies or originals of bids, award recommendation letters and adjusting change orders from four Worcester County courthouse projects. The allowances and bids were as follows:⁴⁹

	<u>Allowance</u>	<u>Iaccarino bid</u>	<u>Other bids</u>
Milford (1968)	\$30,000	29,880	Custom Hall 34,917
Uxbridge (1970)	35,000	34,695	Mystic Woodworking 36,460 Lloyd's Woodworking 37,495
Westborough (1970-71)	39,000	38,850	Schwamb Corp. 41,820 Mystic Woodworking 44,900
Dudley (1970-71)	42,000	38,000	None

Carl Iaccarino was interviewed by the Commission staff, and denied that all

but a small portion of the above projects were administered through allowances, and did not admit to having made the prior "deals" as described by Masiello. He did state that, in allowance situations, the architect called up for prices to insert as the allowance; and that later the architect called up to ask for names to which the specifications should be sent for bids. Iaccarino stated that he give the names of people "in the same league" as his company, whose prices and workmanship were competitive: he later corrected himself and stated that William Martellotta did so, but that he didn't remember Martellotta ever asking which names to give to the Masiello people. Carl Iaccarino did confirm that he himself compiled the bids.⁵⁰

Because of the discrepancies in the Masiello and Iaccarino stories, the Commission summoned Carl Iaccarino to testify under oath. However, when he appeared privately before the Commission on March 7, 1980, Carl Iaccarino invoked his privilege against self-incrimination in response to all substantive questions.⁵¹

The Commission also summoned William Martellotta, Iaccarino's project manager, to testify privately about the bid procedures. Martellotta denied having had any control over the bidding process for the Iaccarino firm, or even discussing bids in the office.⁵²

In projects where the millwork was handled as part of the general contractor's bid, rather than as an allowance, Iaccarino seems to have benefited from the architect's intervention or the "last look" device. William Masiello testified:

Q. Did you also have an understanding with general contractors that you would get a last look...and what does that mean?

A. Yes. If something manufactured had to be installed into a project and [if] after the [general] contractor had bid the supplier [who] was a friend...wasn't part of the general contract...on a phone call from me to the contractor [I would ask] if the person who I chose could be used, could you give him a last look...meaning...if a bid was \$7000 on a specific item and my friend chose to do it for \$6999, [the general contractor] would do it for him, let it go through.⁵³

Raymond Allard also testified:

Q. What did Mr. Masiello do in return to assist Mr. Iaccarino on his firm?

A. Normally just assured that he would get the work on the projects whereas if, for instance, Iaccarino was not carried by the general contractor as the low supplier because most of his work was not [by] filed sub-bid. It was direct to the general contractor. In those cases Bill [Masiello] would call the general contractor, find out what the low price was, then go to Carl Iaccarino and find out whether he could or would do it for that low price and [then Masiello] would go back to the general [contractor] and request [him to] consider Iaccarino at the same price. This appeared to happen on more than one occasion.

Q. In other words, Bill Masiello assured Mr. Iaccarino or his firm the last look at the informal bidding process?

A. That is correct, yes.⁵⁴

(b) What was given in return: William Masiello testified that Iaccarino provided extensive remodeling work in return for the contracts received (see testimonial excerpt in IIE above). Although his estimate of the work performed differed from Carl Iaccarino's, they were in apparent agreement that the value of this work was in the realm of five figures. Masiello stated that the Iaccarino firm finished his kitchen, bathroom and two bedrooms, including rugs and cabinets; they converted his garage into a room and carpeted it, converted his carport into a fully insulated sunroom, and did carpentry work in the yard related to installation of a swimming pool.⁵⁵ William Masiello, Audrey Rawson and Carl Iaccarino all described work done by the Iaccarino firm at the Rawson house: there the Iaccarino firm constructed a family room out of an existing garage, complete with heating, electrical work and a fireplace, and added on a two-car garage to replace the existing garage.⁵⁶ In the Mechanics Tower offices of the Masiello firm, Iaccarino built individual cubicles for draftsmen (which he subsequently tore out at the draftsmen's request) and cabinets, and carpeted and panelled William Masiello's office.⁵⁷

Both William Masiello and Audrey Rawson admitted that this remodeling was performed without charge to themselves, and Masiello characterized it as a \$100,000 "rip-off" of Worcester County funds.⁵⁸ As to free work performed for William Masiello, Audrey Rawson and the Masiello offices, Carl Iaccarino admitted that extensive work was performed for Masiello's home, office, and secretary's home, but his estimate of the value of these services was significantly lower than that of William Masiello; he estimated having done about \$14,000 worth (wholesale estimate). More importantly, in an interview with Commission staff, Iaccarino denied that there had been any understanding with Masiello that such work and materials were to be provided free of charge. He stated that William Masiello gave the impression that he would pay for them, but just never did so.⁵⁹ The Commission was unable to definitively resolve these contradictions because of Iaccarino's refusal to testify under oath without immunity.

The Commission established that the Iaccarino firm furnished a custom-made bar, bookcase and desk unit for Senator James Kelly's Boston apartment, at William Masiello's request. Masiello stated in an interview that the senator asked for the room dividing unit and described what he wanted, and then Masiello had his employee, Joseph Miller, design the cabinet and the Iaccarino firm produce it.⁶⁰ Miller testified before the Commission that he obtained measurements and other information from William Masiello, spent approximately a day designing the unit, producing drawings of the unit, cross-sections and the recommended construction materials.⁶¹ William Masiello stated that the Iaccarino firm manufactured the unit and delivered it (since it was a large item)

and that neither he nor Kelly paid for it.⁶² Carl Iaccarino, when questioned informally about this matter, said he didn't remember anything specific about making such an item, simply that he thought they had made a model of something for an unspecified person, and he later declined to make any statement under oath.⁶³

Aside from performing free remodeling and building furniture, Carl Iaccarino was one of those suppliers on whom William Masiello called when there were political fundraising tickets to be sold. William Masiello testified that he was sometimes taken care of by suppliers making contributions rather than money for his personal use.⁶⁴ This was amply corroborated by others:

Well, generally...the system of raising funds for political functions or contributions, was done with the aid of suppliers of various building materials...he (William Masiello) on occasion would complain about the quantity of [fundraising] that was being more or less forced on him.... He would call...various suppliers...and relay to them that, you know, he needed x number of dollars as contributions for this or that fund or fundraising event.... Another [supplier] who complained on occasion...was a Carl Iaccarino...that the cost of doing work with Masiello...was exceedingly high and that the demands were constantly from Bill Masiello....

Q. Did you learn from Carl Iaccarino...that he had made contributions of money at Bill Masiello's request?

A. Yes. He while I was in his employ on more than one occasion complained to me that Bill Masiello was being unreasonable and just demanding for contributions because he was doing a lot of Masiello work and he felt that the price to do it...was too high and that [followed] Bill's demands for contributions.⁶⁵

A general contractor who had done many projects with the Iaccarino firm confirmed that Iaccarino had told him that Masiello "bled" him (Iaccarino) and had approached Iaccarino, asking for money to be used for others.⁶⁶

An audit of the financial records kept by the Iaccarino firm showed that, in the late 1960s and early 1970s, the corporation contributed over \$800 to various political campaigns and individuals, including Philip Philbin and Paul Tivnan (Worcester County Commissioners), Senator James A. Kelly, and Anthony Vigliotti (Worcester County Register of Deeds).⁶⁷ Carl Iaccarino and his wife also made personal contributions totalling \$2000 in 1971-73 to Senator Kelly.⁶⁸

Of greater interest is the amount of cash generation identified by the Commission's financial staff. Examination of cancelled checks and ledgers revealed a total of \$123,607.80 in unexplained cash emanating from the corporation between 1968 and 1977. This was charged off as loans, employee income, commissions, petty cash and subcontracting, and while undoubtedly some might be attributable as bona-fide business expenditures, the high volume and the absence of loan repayments and (in some cases) large individual amounts suggest the possibility of diversion of money for political or promotional purposes.

(c) How the firm was able to pay: In examining the methods by which the

Iaccarino firm obtained public work, the obvious question arose as to how the firm was able to afford the heavy financial obligations of kickbacks and yet still prosper. At least one explanation was its ability to inflate prices and, at the same time, control competition. Another answer was found when buildings themselves were examined and construction supervisors and employees were questioned.

The Commission learned from interviews and testimony that the Iaccarino firm routinely deviated from specifications to substitute cheaper materials without giving a corresponding reduction in price. Some of the deviations were approved on Masiello-designed projects because William Masiello knew of the financial demands being made on Iaccarino, and directed his architects and construction supervisors to ignore the changes or sign off on them. Others simply slipped through the process until it was too late to change them.

Iaccarino's project manager testified about his knowledge of substitutions from the supplier's end:

- Q. ...I'm asking you whether with the Iaccarino firm there weren't always substitutions of a type of material or cabinet or manufactured unit that was not only less expensive but not as specified and of lesser quality?
- A. I will split the question. I don't know about the quality part. The less expensive, most likely.
- Q. ...it's the substance of what you testified here today...that there were many substitutions made at the Iaccarino firm for the purpose of saving money, is that correct?
- A. Yes.
- Q. Let me ask you whether in cases of the type you're now describing a credit is ever given to the owner or to the general contractor on the price originally bid or quoted by the Iaccarino firm?
- A. No, not unless asked for.
- Q. Would it be fair to say in general the answer is no?
- A. In general, no.
- Q. That a credit is not usually given in these situations?
- A. Right.
- Q. The original price, the price bid or quoted by the Iaccarino firm is estimated, is made up on the basis of the original specifications...is that right?
- A. Right.
- Q. And if Mr. Iaccarino in preparing the quote knows ahead of time that Mr. Masiello is going to let him use [a cheaper material], he knows that he's got some extra room in that quote to make money, is that fair to say?
- A. It's a general statement. Generally.
- Q. ...Earlier when you were talking about [how] you have plans and specifications for cabinet work or molding where it is possible to change in the sense of either because it's interior cabinet work [you] substitute cheaper stock or

perhaps if it calls for...an inch molding, [you use] three-quarter inch molding to effect a change, if that is done is there a change reflected in the price the firm is charging for the work it's doing?

A. No.

Q. So, that's the way in which...the margin of profit for the firm is still realized?

A. Exactly.⁶⁹

Raymond Allard, who was an architect at the Masiello firm and its president until 1975, and who was employed by the Iaccarino firm after he left Masiello, was in a unique position to observe the Masiello-Iaccarino dealings. He testified:

Q. To your knowledge, was there also a way in which Mr. Masiello could assist Mr. Iaccarino to come out regularly as the low bidder on a job?

A. I think it was sort of an understanding between Iaccarino and Mr. Masiello if and when he was low [bidder], that when he did the project that hopefully there would be some area for substitution of materials as Bill had put it without hurting the job, but allowing Iaccarino to possibly pick up some savings.

Q. What type of substitution do you refer to?

A. Oh, possibly in the species of lumber, for instance, on a finished hand rail if there [was] a lot of it on the job or possibly in the area of wall panelling, finished panelling which were the type of things that Iaccarino supplied.

Q. And the point is that all those substitutions after the job is under way have to be approved by the architect?

A. Yes. The supplier was to submit shop drawings or specifications [of] what they intend to supply and someone has to pass judgement on them.

Q. Your testimony is that if a supplier such as the Iaccarino firm knows that the architect won't give him a hard time in approving substitutions, then he can trim his price knowing that he will be able to substitute less expensive materials in some places?

A. That is correct.⁷⁰

William Masiello stated that he finally stopped recommending the award of millwork contracts to Iaccarino because Carl Iaccarino eventually went too far in cutting corners and substituting cheaper materials.⁷¹ Masiello took a degree of pride in the buildings designed by his firm and ultimately seemed unwilling to tolerate deviations which obviously affected the appearance of his firm's "product".

(d) Examples of the "rip-off": William Masiello cited numerous examples of corner-cutting by Iaccarino: pressboard instead of plywood, paint instead of lamination, omission of joint finishing ⁷² to name a few. The Commission's staff was able to conduct a detailed investigation of several of these and to corroborate Masiello's allegations in substance, through interviewing witnesses, reviewing whatever documentation remained, and sending construction specialists on-site to inspect the work product.

One of the most detailed project descriptions given by William Masiello was that of Holyoke Community College. He testified:

...the Holyoke Community College Project we did not specify but Mr. Iaccarino did win the bid through...the general contractor. We were handling the supervision on it and it came time for benches, outside benches.... I never was out there, and their gym had specified a redwood -- I believe it was a two by eight glued together boards that [were] to make up a bench that was approximately 21 inches wide. I believe it took 14 such pieces. Mr. Iaccarino called me and he said that he couldn't get redwood, that if we could substitute, I believe it is, yellow pine. I could stand corrected.

Q. Could it be cedar as well?

A. It was something a lot less than redwood. So, what I did, I called Harry Clausen (of Daniel, Mann, Johnson & Mendenhall, the project architect) out in California and asked him if we could make the substitution. He agreed that we could make that change. I no sooner got through making this change for Mr. Iaccarino and he decides he wants to leave one of the boards off. So, instead of 14 we went to 13 so it got to be a never-ending situation. Then...there was a load of cabinets in just about every classroom and just about all over the place. We called for a plastic laminate within the inside of the cabinet doors and shelving inside. Well, Mr. Iaccarino on his own went out, put the cabinets in, installed them.... He came up to me one day and said oh, we goofed. We didn't laminate the inside. I said, what are we going to do about it, take them out or what? He said, can we [paint] them. So, they got painted, the cabinets up there, instead of lamination.⁷³

Construction specialists working for the Commission examined BBC files and the benches themselves. The bench specifications actually called for cedar, but on October 18, 1972, William Martellotta of the Iaccarino firm wrote to the general contractor requesting a change to yellow pine (a much less expensive wood) because of the unavailability of cedar, but with no change in contract price. Martellotta also offered to supply redwood, for an additional charge of \$4800. The general contractor, Daniel O'Connell's Sons, Inc., on December 20, 1972 submitted a change order request to the BBC to add \$5787.07 to the contract (\$4800 for lumber, and the remainder for overhead and a bond). On January 2, 1973, John Wackell of Masiello and Associates (which was performing the construction supervision on behalf of DMJM) also wrote the BBC recommending approval of the change order and rejecting the use of yellow pine for outdoor use. It appears that the BBC wanted to consider yellow pine, because Wackell wrote again on January 26, 1973, referring to an intervening telephone conversation and an attached letter (dated January 23, 1973) from Rex Lumber Company of Cambridge, Mass. which stated

It is common knowledge among most woodworkers that yellow pine will check [crack] readily when exposed to the elements, and it is just generally a poor wood for this kind of use.

and reiterating the choice of redwood over pine. Finally, the BBC, over the signature of Walter Poitras, approved the change to redwood and the increase of \$5787.07 on January 31, 1973, and the BBC transmitted its approval to the Masiello firm on February 8, 1973.⁷⁴ (See copies of correspondence in

Appendix, #1 through #7.) Physical inspection of the benches revealed that they were made of redwood.

The change from cedar to redwood raised the price (excluding overhead) 97%, from \$4950 to \$9750. (See Iaccarino letter of December 13, 1972, Appendix #8.) Because cedar was unavailable in 1973, the Commission could not obtain a 1973 price listing for cedar from any lumber wholesaler, in order to verify the legitimacy of the increase. However, current prices show redwood as only 15% more expensive than cedar (\$198 versus \$172 per thousand board feet) with no significant fluctuations in comparative price over the last ten years.⁷⁵ If one compares the difference between a 15% and 97% increase on this item, it appears that the change order may have been inflated by about \$4000.

Such calculations may seem too speculative to be relevant here, but they take on some significance in light of other information received by the Commission. William Masiello stated in an interview with Commission staff that Audrey Rawson (his secretary) related to him a remark by Carl Iaccarino, namely, that if he was successful in obtaining a certain change order at Holyoke Community College, he would buy himself a Lincoln Continental.⁷⁶

In auditing the financial records of the Iaccarino firm, Commission investigators came across many payments made by the corporation for automobiles, among them a Skylark Convertible, a Pontiac Firebird Trans Am and at least two Lincoln Continentals. One corporate check, dated 5-2-73 was paid to Harr Lincoln Mercury for \$4000 with the notation "Balance in full re: 1973 Lincoln Continental Mark IV." (See check in Appendix #9 .) It should be noted that this payment was issued less than three months after the firm received approval of the change order for redwood. The Commission was unable to ascertain whether the Iaccarino firm was paid for the change order during that period, because the firm failed to produce its cash receipts records for that period, in response to a Commission summons.

The amount of wood used in the benches was also reduced, as Masiello had related. Specifications required sixteen boards to be glued together for the benches (24 inches wide altogether) but only fifteen were used (adding up to 22 1/2 inches wide). Thus, instead of using 15,000 board feet of lumber, the firm used only 13,700, saving itself about 9% of the cost. No downward change order was processed to pass on this savings to the Commonwealth.

Finally, the shelving and cabinet interiors described by William Masiello were inspected, and found to be varnished rather than laminated. Again, the Commonwealth paid for the lamination that was specified rather than the cheaper finish it actually received, since no change order was processed.

A more recent example from William Masiello's testimony was the courtroom

paneling which Iaccarino supplied for the Gardner Courthouse in 1975-76:

Well at the Gardner Courthouse, as I told you, Mr. Iaccarino went in as the allowed bidder but even prior to its receiving the bid he noticed the flaw in the specifications, the flaw being that the paneling on the wall, we called for a quarter inch V-grooved panel and we called for a flame retardant panel and a four-hour fire rating. Well, Iaccarino knew even before the bids went out that there was no such animal. There was on the market, let's say, when we did the Milford Courthouse or even the Uxbridge Courthouse, US Plywood did in fact manufacture a four-hour fire quarter inch V-grooved panel, but what was happening especially in the Uxbridge Courthouse is to get a four-hour rated paneling you had to impregnate the wood with salt and then when these panels were put up the salt would bleed through because the salt would come out of the V groove so what US Plywood did, they eliminated the quarter inch and they went to a three eighths V-grooved panel.

When we speced the Gardner Courthouse Iaccarino knew this, but he [bid] it anyway so when the time came and all the bids were opened he was the low bidder. His confession was to come to me [afterwards] and say they don't manufacture that product anymore. I said to him, well, when did you learn about that? He said well, I have known it right along so I read [to him] a portion of our specifications that says if you do know this [when you bid] you are stuck with it. What he was looking for at that point was a change order in the amount of \$10,000. I said that I couldn't get him a change order for \$10,000.

So, what I next did for Mr. Iaccarino because he did this, he said well, rather than go through a four-hour rated wood which is very, very expensive which is a class one wood, I said go to class two and use that. It is not a four-hour rating. There is no -- why you use the four-hour rating panel is when -- you only use it when people sleep in a building. I am sure Mr. Forbes knows this, and we didn't need a four-hour rated panel so I said, well, there is a real big drop [in price] from a four-hour panel to no rating. I said well, why don't you do this. So, Mr. Iaccarino went out. He got the worst piece of paneling you could ever see. I finally turned around and I said go out and put the exact thing that was speced. You bid it. You wanted it. You figure it out.

What did he do, he went out and he purchased a second grade sheet of paneling and inadvertently when it got out on the project the contractor had been waiting because we had been having these confrontations, Mr. Iaccarino and myself, and he just came along. What we had purchased was a book-match[ed] paneling and he had to be very careful when he put it up and if it went up and if it went out of sequence it looked like hell, excuse the expression. Anyway, the contractor did put it up and it did look like hell. Then we got into a confrontation with US Plywood. I went to the president of the corporation to have him come in and ultimately they sent out two people from Minneapolis to fix it right on the wall. That is what happened with Gardner.

Q. Are you aware now there [have] been problems with the paneling the way it is installed?

A. It is my understanding because the paste -- Mr. Iaccarino [the general contractor], he did it in haste. It is my understanding that it is peeling off the wall at this time. They have a serious problem, yes. I believe you people have informed me of the problem.⁷⁷

According to Masiello, in short, Iaccarino submitted a bid and was paid based on particular specifications, but later supplied paneling which was less fire retardant, and which was imperfect (i.e. "seconds"), for the original price. (The Commission was unable to substantiate the allegation of imperfections.) William Masiello had his construction supervisor, John Wackell, disapprove the paneling as installed because of variations in color, texture and finishing from what had been previously submitted for approval. The BBC, the general

contractor, the manufacturer and a testing company all became involved in the dispute (See Appendix 10 for memo of Site Meeting on 10/6/76) with the result that factory finishers were sent by the manufacturer to the site to satisfy the architects.⁷⁸

An instance in which the Commission clearly found a substitution at the Gardner Courthouse was in shelving and built-in seating. The specifications for these items called for stain-grade birch plywood to be used. Construction specialists hired by the Commission visited the site and ascertained that instead of birch, Iaccarino had installed particleboard, which cost approximately 78% less than the specified birch. No change order was ever processed, and the full price was paid, giving Iaccarino almost \$700 extra on this one item; apparently, the particleboard was approved by the architect as equal,⁷⁹ even though bending stress tests show that generally it is not equal.⁸⁰ (See Appendix exhibit #11.)

The end result of the repeated substitutions was a general falling-out between William Masiello and Carl Iaccarino after 1976. As William Martellotta testified:

- Q. After [the Gardner project] there was a change in the personal relationship between Carl Iaccarino and Bill Masiello?
- A. I would say that is about the time it happened.
- Q. And can you describe what the change was?
- A. They just never talked to each other. They saw each other in coffee shops, there would be a nod instead of a hi, how are you, or a pat on the back. It was a nod. It was a cold relationship after that.
- Q. Has that been the case to this day?
- A. Yes.⁸¹

Thus, one of the individuals who had taught William Masiello "how the system worked" finally carried the scheme so far as to alienate his friend of many years, and cause him to say: "Even amongst crooks there is no honesty."⁸²

6. Hardware: Shawmut Hardware Corporation, Inc.

1. The trade.

The supply of contract hardware involves compiling estimates and bids for architects and general contractors for hardware related to the moving parts of a building-hinges, locks, door openers, and the like.⁸³ The Commission's investigation disclosed that supplying hardware often encompasses the writing of hardware specifications and plans for the architect, as well. In public projects, the hardware contract is ordinarily handled by the general contractor as part of the general bid; under some circumstances such as the use of an allowance, it is administered by the architect.

2. The firm.

Shawmut Supply Company was formed around 1918 as a supplier of hardware and building specialties. In or about 1940, Irving Marcus assumed ownership of the firm as chief stockholder, and he continued his ownership through approximately 1973. An individual named Joseph Bartoloni came to work for Marcus in the 1940s, as a salesman and estimator. In about 1968, a new corporation, Shawmut Hardware Corporation, was formed to take over the hardware end of the business. Shawmut Supply continued to deal in specialty items and all assets remained with it; current contracts were taken over by the hardware firm, which was owned by Marcus (49%), Bartoloni (49%) and Marcus's son, Henry (2%). During that time, Shawmut Hardware opened a branch office in Fitchburg. After two or three years, Bartoloni resumed the status of employee, and in about 1973, Marcus disposed of his interests in the firms, dissolving them. He sold the hardware business to Bartoloni, who subsequently did business as Shawmut Hardware Company, Inc., and Marcus worked for an architectural firm for the following two years. In 1976 Marcus retired and in 1978 he moved to North Carolina.⁸⁴

3. Scope of study.

The Commission, after receiving information about supply contracts awarded by the Masiello firm to Shawmut, summoned the records of the corporation and attempted to interview the corporation's principals. No corporate records were ever produced: Mr. Marcus testified that records for 1973 and before had been discarded.⁸⁵ Mr. Bartoloni testified that he had not seen any records since leaving in 1973 to start his own firm, and his own firm's records were not currently in his possession.⁸⁶ Mr. Sargent, manager of the firm's Fitchburg office from 1968-73, also had not seen nor had custody of any such records since 1973. The Commission was unable to obtain enough records from bank sources to conduct an audit, and thus concentrated on testimony, interviews and a search of

public records to reconstruct the firm's business dealings and the degree of its involvement with projects designed by the Masiello firm. The Commission learned that Shawmut received contracts for at least 90% of the Masiello-designed projects on which it submitted bids,⁸⁷ among them:

Otis Air Force Base	MCI-Concord
Milford Courthouse	MCI-Norfolk
Uxbridge Courthouse	Shrewsbury Housing Authority
Westboro Courthouse	Worcester Housing Authority
Dudley Courthouse	(Pleasant Park)
Gardner Courthouse	Worcester County Jail

The Commission's Staff was able to obtain copies of all bids on only the Worcester County Courthouse projects (excluding Gardner), the Worcester County Jail, Otis AFB and MCI-Norfolk, all of which were administered by the Masiello firm under allowances.⁸⁸ Presumably, some of the other projects did not involve written bids because the hardware price was simply included as part of the general contractor's bid.⁸⁹ Because of the documentation difficulties, investigative efforts centered on the Worcester County projects, for which the most information was available.

4. Investigative results.

(a) How the contracts were awarded: In his public testimony before the Commission, William Masiello named Irving Marcus as one of the individuals from whom he learned "how the system worked."⁹⁰ Indeed, even Frank Masiello may

have learned the system from Marcus; he and Marcus knew each other before Frank set up his architectural practice in Worcester in the 1950s.⁹⁰

According to Marcus, he first started working with Frank Masiello in drawing up specifications and in furnishing preliminary estimates and allowance prices for him.⁹² When asked if either Masiello was doing him a favor in giving him this opportunity, Marcus responded,

Well, originally we were doing Masiello a favor when we started doing business with him. At the time he had small contracts and we helped him, rather than he helped us. That's how it originated.⁹³

William Masiello testified that the arrangement with Marcus closely paralleled the Iaccarino situation: he had Marcus provide specifications and set the allowance price; Marcus subsequently designated other suppliers to be invited to bid, and they customarily gave higher bids than his own.⁹⁴

Marcus's testimony provided somewhat more detail: he had a "loose agreement" with other hardware suppliers (William Davies Company, D.H. Eskin Co., Campbell Hardware, Sanders Hardware Co., and Chandler and Barber Co.) whereby they each provided specifications and estimates for different projects. When the time came to bid on a particular project, the supplier who had written the specifications would call the others in the group and inform them of his bid so they would write up higher bids and submit them;⁹⁵ this was done to give the award an aura of legitimacy and competition. Marcus testified that bids were either mailed in or, on occasion, he picked up the various bids himself and delivered them all to the architect's office or directed an employee to do so.⁹⁶ George Sargent, head of Shawmut's Fitchburg office, testified that on some occasions Irving Marcus gave him all the bids in separate envelopes to carry into Masiello's office and that he himself did not have contact with the other bidders; he customarily stayed to see the bids opened.⁹⁷ Both Marcus and Sargent testified that they arrived at the preliminary estimate and allowance figure by using the cost and adding on 50% of cost for profit.⁹⁸ Sargent testified that the actual bid price was ordinarily less than the allowance, and was determined by Marcus.⁹⁹

The following chart summarizes the bid documents retrieved from Worcester County records on five projects and indicates the hardware allowance price for each project, the time of bidding, and each bid received.

<u>PROJECT</u> <u>DATE OF BIDS</u>	<u>ALLOWANCE</u>	<u>BIDS RECEIVED</u>	
Milford Courthouse 7/67	\$ 5500	*Shawmut Supply Co.	\$5482
		D.H. Eskin Co.	5995
		Sanders Hardware Co.	6245
Uxbridge Courthouse 10/69	9500	*Shawmut Supply Co.	7980
		Chandler and Barber Co.	8650
		D.H. Eskin Co.	8790
		Campbell Hardware	8800
Westboro Courthouse 10/70	10500	*Shawmut Hardware	6450
		Waite's Industrial	6488
		Hardware Specialties	7101.85
		D.H. Eskin Co.	9580
		Campbell Hardware	9900
Dudley Courthouse 3/71	10500	*Shawmut Hardware	7596
		Campbell Hardware	7700
		Waite's Industrial	8867
		Hardware Specialties	8900
Worcester County Jail	50000	*Shawmut Hardware	35997
		Campbell Hardware	37440
		D.H. Eskin Co.	37925

* indicates contract awarded

As seen in the chart, several of the same "competing" bidders appear on most of the projects, and are those implicated by Marcus in his bid-rigging scheme. Generally, their prices fall within \$1000 of each other. George Sargent testified that he probably brought in the predetermined bids on all courthouse projects except Milford, which predated his association with the firm.¹⁰⁰

It should be noted that in one instance, the Westborough Courthouse, there were more bids than usual. (See Appendix) The Commission heard testimony on this project from Raymond Allard (formerly of Masiello and Associates):

- Q. There was at least one occasion, to your knowledge, when Mr. Marcus came to the Masiello office carrying his own bid and two bids from competing firms?
- A. Yes, that's correct.
- Q. And was there a particular occasion when you chose to solicit a fourth bid from another firm?
- A. Yes. There was an occasion on the West[boro] Courthouse where unbeknownst to Bill or Mr. Marcus I sent plans and specifications of the West[boro] Courthouse to another hardware supplier, I believe, in the Boston area soliciting a bid, and he did in fact bid on it and the circumstances are that Shawmut Supply's bid was somewhere under \$10,000 for the hardware with the second bid being slightly higher and the third bid higher than that. These two other bidders were apparently bidders solicited by Mr. Marcus whereas the fourth bidder that I solicited, his price was somewhere in the vicinity of slightly less than \$6,000 and --
- Q. Did you have a discussion with Bill Masiello at that point?
- A. I did at that point and showed him the bids, that bid in which he compared with the other bids and he became slightly upset, first that I had done it, and secondly because of the spread between the new low bidder and Shawmut's bid and that he apparently had been getting ripped off by Shawmut Supply by the inflated bids and by the lack of equal amount of contributions.

- Q. As a result of that, did Bill Masiello get in touch with Mr. Marcus on that particular bid?
- A. I seem to recall that Mr. Marcus was there and Bill Masiello [sort] of read them out and off about the whole situation and was quite upset about it at which time Mr. Marcus filled out a new bid slightly lower than the low bidder and gave it to Bill, and I believe he did in fact supply that job at the lower price which further upset Bill that Mr. Marcus could do the job lower than the lower bidder and apparently still make a profit.
- Q. And what upset him was that he wasn't getting his share?
- A. Correct. Marcus's share was obviously greater than his and that really wasn't quite fair.¹⁰¹

Actually, Allard's memory of the event nine years before was slightly inaccurate, although substantially correct. A total of five bids were received, two of them (Waite's Industrial and Hardware Specialties) directed to Allard's attention and presumably sent in response to his solicitation. (It is possible that he mentioned the job to one firm, which also passed on the word to another.) George Sargent, and not Marcus, was actually the individual who carried in the other bids. (See Appendix exhibits 13A - 13E for copies of bids.)

Sargent testified that the Shawmut bid retained in the files (and reproduced in the appendix to this report) was not the one he originally brought in. When bids were opened, the Shawmut bid was slightly lower than those of Eskin and Campbell (which he brought in) but higher than Waite's and Hardware Specialties (which came in independently). According to Sargent, William Masiello was very surprised to see the two extra bids and was "a little shook up." To salvage the situation, Masiello asked Sargent whether he had any blank bid forms with him, which he did, whereupon Masiello had his secretary type up a new bid with an amount lower than all the others, and the original bid was destroyed.¹⁰² This episode was the most blatant example of bid-rigging uncovered by the Commission.

It is interesting to note that if the allowance on this project (\$10,500) was calculated as cost plus 50 percent, then the cost to the supplier was \$7000 and two bids (\$6450 and 6488) were submitted at below cost. However, it seems much more likely that, as in the Iaccarino case and others which follow, the allowance prices were generally more inflated than was first admitted, and that in this instance the profit margin was simply cut somewhat by the competition. If prices were generally inflated, they would explain why the Shawmut firm was financially able to give money to the Masiellos, as discussed in the next section(b).

William Masiello said that contracts for these manufactured items became increasingly difficult to rig, as other legitimate bidders became aware of the projects and would submit bids which were lower and too difficult to rule out in favor of Shawmut.¹⁰³ It appears from the chart above that on two succeeding projects, Shawmut was forced to cut its bid to a smaller percentage of the allowance price to remain competitive, yet must have still found these contracts to be profitable, since the firm continued to bid on them.

(b.) What was given in return: In their respective appearances before the Commission, William Masiello, Irving Marcus and Raymond Allard all testified that Marcus contributed to various political fundraising causes when solicited by Masiello.¹⁰⁴ Because of the dearth of financial records from Shawmut, and lack of memory, no firm figures were obtained, but Marcus testified that the contributions were always made in cash and that, while they were nominally made to purchase fundraiser tickets, he seldom received any tickets. He estimated the yearly total to be in the hundreds of dollars.¹⁰⁵

Besides political contributions, Marcus testified that:

. . . I have had occasions . . . that Billy Masiello was in town, there are times he would call me and say, I have to entertain some people and I ran out of money, can you let me have a few dollars to see me over for dinner or something like that.¹⁰⁶

Marcus testified that this happened perhaps five times and that each time he gave Masiello about \$50-100, which was never repaid.¹⁰⁷

Another way in which Marcus obliged William Masiello was in the donation of hardware items; he stated it was common to give hardware samples to anyone in the firm that asked for them, and he gave such items freely for someone's home.¹⁰⁸

One area in which accounts differed was with regard to cash payments for the personal use of William or Frank Masiello. William Masiello stated in an interview that one project on which he recalled receiving a "kickback" from Marcus was the Worcester County Jail. In that project, where Shawmut received the hardware contract for \$35,997, (a large contract in comparison with others Shawmut received under Masiello) William Masiello recalled arranging for a kickback of approximately \$3500-4000 in cash for his brother Frank, to be paid in two installments. He recounted how the first installment was passed during dinner at Jimmy's Restaurant in 1971 or 1972, when in his presence Marcus gave Frank Masiello approximately \$1500 cash. For the second installment, William Masiello allegedly visited Marcus's office in Dorchester, where Marcus attempted to give him the balance in a check made out to William Masiello. When he refused to accept a check, Marcus agreed to pay cash, and on a subsequent visit he had cash ready and paid William Masiello approximately \$2500 in cash, which William passed on to his brother Frank.¹⁰⁹

In his testimony, Irving Marcus presented a different version:

A. There is a matter that came up prior, I don't know if it was brought up again now about a loan we made to Frank Masiello after he had left the company which had nothing to do with the political aspects of the thing, whatsoever.

Q. What was that loan?

A. He had asked me for some money. He was in Florida at the time and he wanted to buy a car.

Q. This was Frank Masiello?

A. Frank Masiello.

Q. You loaned him so much?

A. I think it was about \$4,000.00.

Q. And did he repay you?

A. Yes.

Q. What was the date of the loan, approximately?

A. I presume '79. It was after he had left the company.

Q. And when did he repay it?

A. '69, I should say. Was it '69? Yes, I am sorry. Within a year or so.

Q. Now, apart from that loan and apart from your buying tickets, apart from your giving a political contribution, quotation marks or without quotation marks, did you ever give any money to Mr. Masiello, either Masiellos, or give money to anyone else at his or their direction?

A. I cannot remember anything of that nature.¹¹⁰

In a private interview, Marcus said that Frank Masiello "repaid" him by funneling a private contract for work in Florida to Marcus, whereupon Marcus simply forgave the loan and considered it a commission for the work in Florida. However, Marcus did not offer the same explanation when subsequently questioned under oath as see above.

Frank Masiello's version also differed: he stated when interviewed on this subject that a Florida client had seen samples of a new line of hardware which was as yet only available in New England through certain dealers, of which Shawmut was one. Frank Masiello put his contractor and Marcus in touch with each other and when Marcus subsequently made the sale he asked Frank if he wanted some extra money added to the contract for himself and Frank agreed on a "commission" of \$3000-4000. Frank said that his brother William conveyed the money (from Marcus) to him when they met each other on a trip to Washington, D.C.

Joseph Bartoloni (Marcus's employee) provided yet another viewpoint on the transaction. He testified that, at about the time the hardware contract for the Worcester County Jail was awarded (the award was approved on June 10, 1971), Irving Marcus told Bartoloni that he (Marcus) wanted \$2000 from Bartoloni to add to \$2000 he himself was giving to William Masiello as a contribution or donation. Bartoloni testified that he obtained \$2000 cash from his personal savings account and gave the cash to Marcus; he subsequently had a conversation with William Masiello in which Masiello acknowledged having previously received the money, given by Bartoloni and Marcus, from Marcus.¹¹³

Taken together, the recollections of William Masiello and Bartoloni are consistent with each other, in that they both relate to the time frame of the Worcester County Jail project (c.1971-72) and involve money given as a "contribution" to William Masiello. Marcus and Frank Masiello's accounts, aside

from being uncertain as to time, contradict each other in that one refers to a loan and the other simply a commission.

Because of the intervening lapse of time (nine-eleven years) the Commission was unable to obtain the necessary bank records to verify any of these explanations. Thus, the discrepancies stand.

Both Bartoloni and Sargent told the Commission that Marcus commented to them on the cost of doing business with the Masiellos. Bartoloni testified that Marcus told him that they had to contribute, donate or buy tickets for political fundraisers (from the Masiellos);¹¹⁴ later when he was in business for himself, Bartoloni remembered this. After 1973, William Masiello continued to solicit Bartoloni to purchase tickets periodically and Bartoloni stalled him when he could, but did purchase a number of tickets on several occasions, and gave him \$200 cash on one occasion in front of the Pier Union Oyster House in Boston. During this later period Bartoloni received four to six hardware contracts (his estimate) through the Masiello firm, and although Bartoloni testified that there was no explicitly stated relationship between the payments and the contracts, he understood there was such a relationship and did not need to be told so.¹¹⁵

George Sargent had also learned from Marcus that the Masiello jobs did not come gratis; he testified that Marcus told him "it was getting awfully expensive to do business" with Masiello¹¹⁶; in an interview he repeated Marcus' assertion that "all the money we get here is not profit; it cost a lot of money to do business."¹¹⁷ Unlike Bartoloni, however, Sargent did not subsequently go along with "the system." When he left Shawmut around 1973 and started his own hardware business in Fitchburg, he visited William Masiello once to see if there were any projects on which he could bid. Masiello replied sure, as long as he (Masiello) knew what was in it for him beforehand and was "taken care of." Sargent understood him to be soliciting money and replied "no way in h_____ would I do it." After that, Sargent neither bid on nor received contracts on Masiello-designed projects, and his firm went bankrupt in 1976.¹¹⁸

Having heard the testimony about the "loose agreement" among Marcus' group of supplier friends, and the "understandings" about donations and tickets, and having observed the contrasting degrees of business success enjoyed by Marcus, Bartoloni and Sargent, the Commission ended with a clear (albeit distressing) overview of the role of contract hardware suppliers in public construction projects.

C. LANDSCAPING: Arello, Incorporated

1. The trade.

As performed by the Arello firm, landscape architecture consisted primarily of site improvement such as the siting and planting of shrubs, trees, bushes and grass. Occasionally, the firm contracted to do an entire landscaping job, including fencing, driveway work, grading, and shoring (all of which it subcontracted), in addition to the site improvement.¹¹⁹

2. The firm.

Arello Incorporated, a landscaping firm, was established in 1958 in Worcester by Robert Arello. It was thereafter incorporated in 1961, about the time that the firm moved to Holden, where it has been located ever since.¹²⁰ Over the past twenty years, approximately 75 to 80 percent of its sales volume has been the result of public contracts, which by Robert Arello's estimate numbered between 100 and 150 jobs.¹²¹ (See list of public projects in Appendix 14.)

The financial records of Arello, Inc. show that the firm's gross sales, which were \$108,324 in fiscal year 1968, jumped to \$636,253 in F/Y 1973 and \$748,054 in F/Y 1974.¹²²

3. Scope of study.

Although the Commission obtained only a small portion of the financial data which was summoned from the Arello firm, it was able to document a substantial amount of cash generation for the years 1971-77. The questions arising from the financial research, when posed to Robert Arello, the firm's principal, elicited yet another story of kickback arrangements, rigged bids, cash payments and free services.

The story centered around five landscaping contracts administered by the Masiello design firm for four courthouses in Worcester County. (Two contracts for Milford, and one each at Uxbridge, Westboro and Dudley.) The Commission located the landscaping bids submitted on these projects and interviewed the other bidders involved, as well as William and Frank Masiello.

4. Investigative results.

(a) How the contracts were awarded: Landscaping contracts in the 5 instances studied were awarded under allowances. William Masiello also stated that, on those occasions where the landscaping of one of his firm's projects was included in the general bid rather than under an allowance, he would call the general contractor and request that Arello be used.¹²³ (This may have been the

case in projects for the Worcester Housing Authority and Oxford Housing Authority, which were designed by the Masiello firm and landscaped by Arello.¹²⁴ The Commission did not obtain documentation on these projects, however.)

Initially, Robert Arello drew up the landscape plan; he testified that, in doing so, he specified certain species or varieties which he might obtain more easily than other suppliers, or which were not obtainable (thus discouraging bidders) and for which he knew he could make substitutions with the architect's approval.¹²⁵ In this way, he was able (with William Masiello's approval) to discourage other bidders, or at least put them at a competitive disadvantage.

After drawing up the plans, Arello told William Masiello what the dollar value of the contract would be, and Masiello would determine how much was to be kickback to himself, add that to Arello's estimate, and set the total as the allowance figure.¹²⁶ As described by Arello, the kickback was not a constant percentage or sum, but varied with each job, and was to be paid to Masiello in cash after Arello received payment from the general contractor.¹²⁷ (A description of how Arello generated this cash will be furnished below in part 4(b).) Arello understood that if he did not agree to the arrangement, he would not get the contract, and vice versa.¹²⁸

When the time came for submitting the landscaping bids, the allowance was administered by Masiello's office. Robert Arello testified that he arranged to secure a total of three bids each time by going to friends of his and asking them to submit bids higher than his; he then took the bids to the Masiello firm personally. (He also testified that, on occasion, he reciprocated and gave them high bids on jobs in which he was not interested; this suggests that such bid-rigging was not confined to the cases or projects enumerated here.)¹²⁹

The Commission's staff was able to locate in Worcester County records the bids submitted on all of the Worcester County courthouse projects mentioned in section 3 above. They are summarized in the chart below.

WORCESTER COUNTY COURTHOUSE
LANDSCAPING BIDS

<u>PROJECT</u> <u>DATE OF BIDS</u>	<u>ALLOWANCE</u>	<u>BIDS RECEIVED</u>	<u>APPROXIMATE</u> <u>ACTUAL</u> <u>COST**</u>	<u>AMOUNT</u> <u>KICKED</u> <u>BACK**</u>
Milford 12/66	None	*Areello Landscaping \$3223 E. Strout Co. 3670 McKeon Tree Co. 3800	\$2500	\$720. (20%)
Milford 7/68	\$4000	*Areello Landscaping 3997.50 J.F. Murphy Co. 4173 McKeon Tree Co. 4200	3000	\$1000. (25%)
Uxbridge 6/70	\$2000	*Areello Landscaping 2250 J. F. Murphy Co. 2537 McKeon Tree 2730	1500	\$750. (33%)
Westboro 10/71	\$7000	*Areello Landscaping 6895 J.F. Murphy Co. 7855 McKeon Tree Co. 8278	3500	\$3400. (50%)
Dudley 1/72	\$7000	*Areello Landscaping 6553 McKeon Tree Co. 6795 PriceWise 7333	3000	\$3500. (54%)

*indicates contract award
**according to Robert Areello

The Commission's staff interviewed Charles and Flora McKeon, former proprietors of McKeon Tree Expert Company, and Jerome F. Murphy, proprietor of the J.F. Murphy Company. Although Charles McKeon flatly denied any involvement in bid-rigging with Areello,¹³⁰ Mrs. McKeon (Flora) after several interviews admitted giving Robert Areello several (but not all) of the phony bids.¹³¹ Jerome Murphy also denied in his first two interviews with the Commission's staff submitting any phony bids through Areello,¹³² but when in his third interview, he was shown the bid documents with either his or his son's signatures, and his own workpapers, he finally admitted the false bids; he denied that Areello every reciprocated.¹³³ His admission came forth on the same day that Areello testified in public about the scheme. Pricewise, a firm which bid on the Dudley project, was another entity owned by Robert Areello, who testified that he used its stationery to draw up the bid.¹³⁴

In each of these projects, the landscape bids were opened at the Masiello firm's offices,¹³⁵ and after the opening, an employee of the firm wrote a recommendation to the Worcester County Commissioners that Areello receive the contract; the recommendation was followed in each instance.¹³⁶

(b) What was given in return: Robert Areello outlined in his testimony a consistent pattern of kickbacks to William Masiello, which the Commission was able to document partially with Areello's financial records of cash generation. A corollary of the cash payments was a number of small landscaping jobs performed

by Arello at William Masiello's request for himself and the Worcester County Commissioners (the ultimate awarding authority for the contracts discussed here). When Arello stopped receiving contracts from the Masiello firm, (around 1972), it was due to an argument over Arello's slowness in performing the free work.

During his public testimony, Arello gave his estimate of what the actual, legitimate price on each of the courthouse projects should have been (these are given in the fourth column of the chart in section 4(a) above) and stated that the difference (shown in the last column of the chart) was given to William Masiello in cash.¹³⁷ It is intriguing to note from these figures that, in the early years of the arrangement, Masiello allocated about 20-25 percent of the rigged contract price for himself, but in the later contracts, he allegedly received 50 percent or more of the landscaping fee, amassing a total of over \$9000.

As mentioned earlier, Arello stated he usually waited until he received payment from the general contractor before paying off Masiello; and when asked how he generated the cash, he testified that he either used cash which he had received as payment for other jobs or he cashed corporate checks made out to "Cash" or to a fictitious name.¹³⁸

An examination of the firm's financial records supports Arello's testimony. Arello Incorporated's cancelled checks for 1971 (the earliest year for which they were available) showed that checks written to "cash" totalled \$1500; in 1972 they totalled slightly over \$1200, and in 1973, \$4315.

More interesting was the appearance, on the 1972 checks, of a payee named "Robert Award." Arello testified that "Award" was a fictional character whom he had invented, with a name similar enough to his own that he could cash the checks easily at banks or stores or gas stations.¹³⁹ Apparently, Arello was successful at cashing them, since in 1972 the cancelled checks to "Robert Award" totalled almost \$4600 and in 1973 they added up to over \$1400. Thus in the three-year period, (1971-73) Arello had access to over \$13,000 from checks to "cash" and "Robert Award," more than enough to pay William Masiello the \$7650 he allegedly received for the Uxbridge, Westboro and Dudley courthouse projects.

Arello testified that after he cashed such checks, he put the money in an envelope which he then personally took to Masiello's office and gave to either William Masiello or his secretary.¹⁴⁰ It is possible to estimate some of the individual payments by looking at cancelled checks to "Robert Award": On December 29, 1973, \$1500 was generated from two such checks, written for odd amounts (\$624 and \$876) so they would be less conspicuous on the books; and on March 9, 1973, Arello cashed two checks written to the "Robert Award Co." for \$413 and \$787, respectively, for a total of \$1200. That same day he also cashed a check for \$800, written to the Worcester County National Bank. (See appendices 15-19 for copies of the checks.)

William Masiello, while agreeing with Arello on the substance of the bid-rigging and kickback scheme, disputed the allegation that he had received the amount of money that Arello enumerated, and put the kickback total at only \$1000. Because the transactions were ultimately carried out with cash, the Commission was unable to trace further the money which Arello said he gave, or to establish which witness gave accurate testimony.

Arello and William Masiello's testimony was consistent on the subject of free services and materials, however. Arello described several hundred dollars' worth of planting which his firm performed at Worcester County Commissioner Walter Kelly's funeral homes, and a similar amount at Commissioner Paul Tivnan's home, both at William Masiello's request.¹⁴¹

In his deposition, Arello stated that he also agreed to do free landscaping work for William Masiello's home if his influence was used to get future jobs for Arello. This led to a falling-out, according to Arello.

. . . I agreed that I would do work for Mr. Masiello at his home if I was -- if his influence was used to get me work, and we agreed I would do the work. He put a new pool in his back yard, I said when I get a chance, I will come over there and I will landscape it. I believe this was right before this Worcester County Jail project that you're referring to. We were busy at the time and I couldn't get there and he kept calling me two or three times, said his wife was getting nervous, yelling at him, can I get there. I told him as soon as I can get a chance, I will get there. I can't put jobs aside I am making money on, and be there. He called me one more time and ordered me to be there the next morning and told me I would never get another job, whether it be Worcester County -- in the area, and I told him I don't take any orders from anybody. He could shove it, and thereafter, that's the reason why I never quoted the job at the Worcester Jail because he was the architect and it would be suicide for me to even work there.¹⁴²

Masiello's swimming pool area did not remain barren, however. The landscaping for the Worcester County Jail was performed by the J. F. Murphy Company which was selected for the job by the general contractor, Granger Brothers, Inc. Jerome Murphy told one of the Commission's investigators that in June, 1973 (during the construction of the jail), Joseph Granger asked him to go to William Masiello's house in West Boylston. Murphy did, and as a result, performed the swimming pool site improvement work, for which Granger paid him.¹⁴³ William Masiello subsequently testified that Granger recovered the costs of this work by deviating from the specifications at the Worcester County Jail with Masiello's concurrence.¹⁴⁴

Once more, in about 1975, Robert Arello attempted to reinstitute the "arrangement" he had had with Masiello. As Arello testified, he agreed to landscape the new Masiello offices on Elm Street in Worcester:

Q. What services did you perform there?

A. Will, it was an old mansion at one time or something like that, we came in and ripped out all the dead trees and shrubs and put in all new sod and bark mulch and we had an agreement that if I got some substantial contracts where he was the architect, we would forget any bills to him.

Q. What eventually happened on this job?

A. Well, eventually nothing came in, so we confronted him and the agreement was I would at least get \$2,000.00 out of \$4,000.00 worth of work because that was the value of material.

Q. The \$4,000.00 was your cost?

A. Yes. Two thousand was the value of the material. So, he agreed to that end of it, and that he said when he got his second mortgage money from the bank, we would get paid.

Q. Did you ever get paid?

A. Well, we received money only because we had to finally give it to a lawyer when we threatened to leave the jobs he had.

Q. You litigated this invoice which you sent him for \$2,000.00?

A. Yes.

Q. And of the \$2,000.00 bill how much were you eventually paid?

A. The lawyer collected \$1,500.00 and I got half of that.

Q. So, for \$4,000.00 worth of work you got \$750.00?

A. Seven hundred fifty dollars.¹⁴⁵

In the end, Robert Arello apparently found out that free services alone were not enough to sustain his favor with Masiello, and that (to quote Masiello) "even amongst crooks there is no honesty."

- D. Office Furniture: Krizik and Corrigan, Inc.
Commonwealth Stationers, Inc.

1. The trade.

In public construction contracts, the purchase of office furniture is ordinarily handled separately by the public purchasing agent after a building is completed. However, on some public building projects, namely those in Worcester County, the Commission discovered that the furniture was included as part of the construction projects, and administered by the architect under allowances.

In the contracts reviewed by the commission, the office furniture supplier provided everything from chairs, desks, files and counters to wastebaskets, ashtrays, and blackboards.¹⁴⁶

2. The firms.

(a) Krizik and Corrigan, Inc.

Located in Worcester, Krizik and Corrigan, Inc. has been doing business since 1962 under the proprietorship of Charles Krizik and John Corrigan. According to the two, only 5% or less of the firm's business has resulted from public contracts;¹⁴⁷ records of the state Comptroller show that payments from the state to the firm have totalled \$598,197.87 from 1973 to 1978, inclusive. Of projects designed by the Masiello firm, Krizik and Corrigan supplied material to the Milford, Uxbridge, Westboro and Dudley courthouse projects, from approximately 1969 to 1972.

(b) Commonwealth Stationers, Inc.

Commonwealth Stationers was incorporated in 1959, and has done business from its Worcester location since then under the management of brothers Arthur and Julius Palley. The firm employs about 22 people, and deals in both commercial and retail office supplies and equipment.¹⁴⁸ From 1970 to 1977, its annual sales income has ranged from \$.9 to 1.5 million.¹⁴⁹ The firm supplied furniture for the Worcester County Jail, the Gardner Courthouse, Belmont Towers Housing (Worcester Housing Authority) and the Westboro Courthouse, all designed by Masiello and Associates, and built (with the exception of Westboro) from 1973 to 1976.

3. Scope of study.

The staff of the Commission obtained records relating to the construction of the Worcester County courthouses and jail, including bids and correspondence regarding office furniture for these buildings. The Commission also summoned the financial records of both Krizik and Corrigan, Inc. and Commonwealth Stationers,

Inc. and audited them for evidence of cash generation or other improper transactions.

4. Investigative results.

(a) How the contracts were awarded: As he stated with respect to other suppliers, William Masiello testified that he had Charles Krizik write the specifications for office furniture on most Worcester County projects. He stated that Krizik was already "on the scene" when he (Masiello) started working on these projects.¹⁵⁰ Both William and Frank Masiello recalled separately that their business relationship started at the urging of the Worcester County Commissioners, possibly of Joseph Aspero or Paul Tivnan;¹⁵¹ Krizik was also an old personal friend of Walter Kelly.¹⁵²

William Masiello told the Commission's investigators that Krizik wrote the specifications on the courthouses in such a way as to discourage other bidders from competing for the contracts. For example, rather than name one manufacturer's products throughout and then give the names of equivalents, he specified various manufacturers for different pieces of furniture, making it cumbersome for anyone else to look up each piece in a different catalogue and then figure out what that competitor's equivalent might be. Another device Krizik allegedly used was to specify those brands of furniture for which he had the local franchises, thereby forcing competition to obtain the merchandise through him (at a higher cost) or through another, more distant, franchise holder (with added transportation costs) or to risk supplying their own line of merchandise and having it eliminated as an unequal product. (The disqualification of furniture as "unequal" is more discretionary and difficult to review than in the case of lumber or hardware, since not only function is involved, but also aesthetic preferences of the client or architect.) Finally, William Masiello stated that public advertisement of these contracts was designed to satisfy legal requirements without in fact notifying many interested parties; they were advertised only in local papers outside of the Boston area, on low-readership days.¹⁵³

Thus, in contrast with some of the supply specialties described previously, furniture contracts were directed by Masiello to a particular vendor primarily by manipulation of the specifications rather than by means of controlled, falsified bids. The results of the process are reflected in the chart which follows, compiled from Masiello and Associates and Worcester County files of bids and correspondence.

WORCESTER COUNTY
PROJECTS

*indicates contract award

FURNITURE BIDS

<u>Project and</u> <u>Date of Bids</u>	<u>Bids Received</u>		
Milford Courthouse (11/5/68)	Palley Office Supply Birmingham Office Equipment Krizik and Corrigan	19,890.90 20,058.41 20,651.61	ALL BIDS REJECTED
(about 12/1/68)	*Krizik and Corrigan Birmingham Office Equipment	18,728.22 19,676.79	
Uxbridge Courthouse (5/5/70) (Furniture)	Dunton Corp. *Palley Office Supply Krizik and Corrigan	16,309.04 16,971.90 19,239.50	(REJECTED)
(4/70) (Counters)	*Krizik and Corrigan Iaccarino and Sons Hyland Office Supply	6,150.50 6,350.00 6,588.50	
Westboro Courthouse (4/71) (Files and Counters)	*Krizik and Corrigan	6,015.00	
(10/71 (Furniture)	Krizik and Corrigan Smith Brothers H.M. Meserve		(bid amounts unavailable; correspondence indicates all three chosen to furnish different items)
Dudley Courthouse (2/72) (Furniture)	*Krizik and Corrigan (other bids, if any, unavailable)	19,939.35	
(4/72) (Files and Counters)	*Krizik and Corrigan Narcus Brothers Iaccarino and Sons	6,475.00 6,900.00 7,000.00	
Worcester County Jail (1/19/73)	*Commonwealth Stationers Palley Office Supply Krizik and Corrigan	62,547.76 62,622.80 84,022.10	
Gardner Courthouse (6/15/76)	Krizik and Corrigan *Commonwealth Stationers Hyland Rice Rolands Palley Office Supply	63,613.51 76,713.00 84,789.21 13,157.74 26,495.77	(partial bid) (partial bid)

On the Milford Courthouse job, Frank Masiello recalls having Palley Office Supply (run by a relative of Arthur and Julis Palley, but a firm separate from theirs) write the original furniture specifications.¹⁵⁴ Palley was subsequently the low bidder, but the first set of bids was rejected by the County Commissioners as being too high. Before another advertisement for bids was published, County Commissioner Paul Tivnan directed Frank Masiello to get in touch with Charles Krizik and have him rewrite the specifications;¹⁵⁵ this was confirmed in an undated, unsigned memo to one of Masiello's employees which said "Get in touch with Mr. Krizik before preparing the new specs per Mr. Tivnan."

Not surprisingly, Krizik was the winning bidder on the second try, although the bids were not substantially lower the second time around. A comparison of the two sets of specifications (Palley's and Krizik's) suggests why. Aside from changes in brand names, the second set of specifications contains a number of instances where only one brand is given, and no substitutions are allowed;¹⁵⁶ in effect this eliminated any competing equal brands and gave the dealer of the specified brand a lock on supplying those items. Meanwhile, County Commissioner Aspero wrote to the Director of Accounts in Boston on November 15, 1968 asking for an additional \$5000 to \$10,000 for the courthouse furnishings, since the first set of bids was so high; he wrote additional letters to Senators Dennis L. McKenna and James Kelly, and Secretary of State John F. X. Davoren, urging them to contact the Director of Accounts in support of his request.¹⁵⁷ Although the correspondence file does not reflect it, the request must have been granted, since Krizik and Corrigan received notice of the contract award several weeks later.¹⁵⁸ Since the extra money was eventually appropriated, the question arises as to the necessity for the second round of bids and as to the reason for Krizik's involvement in redrafting the specifications. The correspondence files did not contain any justification for the redrafted requirement of "no substitutions," although such justification is ordinarily supposed to be available. (M.G.L. Ch. 30, s 39M)

The contract for the Uxbridge Courthouse was split into two parts, (a) office and furniture equipment, and (b) counters. Although Krizik wrote the specifications,¹⁵⁹ his firm's bid was highest on the former, and lowest for the latter, and thus his firm only received the contract for the counters. (Dunton's bid was rejected for failure to include a certified check.¹⁶⁰)

On the Westboro Courthouse project, it is unclear from the records that were turned over to the Commission whether any other firms bid against Krizik and Corrigan for the files and counters contract. It is also unclear what portion of the furniture contract was awarded to Krizik and Corrigan. One irregularity which did appear in the documentation was a request from Charles Krizik to Masiello and Associates for a purchase order to cover, in part, the purchase of

an Olivetti typewriter.¹⁶¹ In his interview, with staff of the Commission, Krizik stated that his firm did not supply typewriters, and gave no explanation for the request.¹⁶²

A similar irregularity, although more substantial, surfaced in the documents related to the Dudley Courthouse contract. In that project, Krizik and Corrigan received the contracts to supply both furniture, and files and counters. Approximately one month after receiving the furniture contract, at a price of \$19,939.35, Charles Krizik wrote to Masiello and Associates requesting an "accessory change order" for \$9,045.65, an increase of 45 percent. Among the items listed for the change order were three IBM typewriters totalling \$1653, and law books costing \$4875.¹⁶³ The change order was approved and invoiced within 3 1/2 weeks of the request, and paid in full one month later.¹⁶⁴ When asked about this change order, and particularly why a furniture store was supplying IBM typewriters and law books, Krizik stated that he didn't supply such items and had no recollection of the change order. Later in the interview, he suggested that sometimes when money has been appropriated for certain items, the client may not want those items but something else, but must invoice for the authorized items in order to get the money; he suggested that perhaps this was the case, but could not say what else the money may have bought.¹⁶⁵ Neither the subsequent invoice (which was not itemized) nor the Masiello employee who approved it, nor the Dudley Courthouse personnel, could shed any further light on the expenditure when consulted by the Commission's investigators.

The next (and probably last) Worcester County project for which Krizik wrote the furniture specifications was the Worcester County Jail; done in mid-or-late 1972, they were also by far the most potentially lucrative, with an allowance of \$75,000.¹⁶⁶ However, Krizik and Corrigan was not awarded the contract. William Masiello described the specification and bidding process:

Well, it was on the Worcester County Jail Project and again, we didn't specify furniture or furnishings so we had to go to an outside consultant to write specifications although we used Masiello's name on top of the specifications. So, I began to deal with Mr. Krizik and one day the jail project came along. I asked him if he would write the specifications for me. So, what he did, he went out with the jail people. They decided how big the furnishings were going to be. Well, when it came down to the end it was probably the last item that had to be bid. There was approximately \$75,000 remaining from the eight and a half million dollars that we needed, and I told this to Mr. Krizik, that he had to keep his bid under \$75,000. So, he sent us specifications and it was bid. It was publicly bid, and I mean it was advertised legally. After it was advertised we started getting calls from the various office furniture suppliers and they couldn't understand the specifications. There [were] no such numbers and it was all confusing. So, I immediately tried to reach Mr. Krizik and I couldn't find him until the day before the bid, but in the meantime I called Commonwealth Stationers and I asked Arthur [Palley], I indicated yesterday, to review this set of plans and specifications. Well, it just so happened I believe that one of the members of

his staff had worked with Krizik and he recognized the bid numbers. What he [Krizik] did is he used the number of one manufacturer and the name of another manufacturer.

So, if you look down the number there was no such thing. There was no way that they could correlate it with another piece of furniture. So, I told Mr. [Palley] we decided on 50 something thousand as a bid at the time. I know it went up to 60 because of change orders. We agreed that he would give me back \$5,000. When the bids were in fact opened, Mr. Krizik did bid \$84,000 [Palley's] Office Supply, I believe it was \$57,000 and Commonwealth Stationers, another, I believe was something like \$55. They were only \$55 apart between the two contractors. Mr. Krizik yelled foul. They came up and reviewed them and spec after spec, item after item, they all compiled with the exception of chairs. He said throw all the bids out. So, I said, Mr. Krizik, I am not going to throw out any bids. You had no right writing the bid that badly. I am going to award to [Palley - of Commonwealth Stationers]. His partner called, Mr. John Corrigan. I believe the bids were opened on a weekend. The middle of the next week he called me, [to say] throw the bids out. We can bring that in at \$50,000. I said you are trying to steal \$35,000, is that what you are trying to tell me? So, we awarded it to [Palley, of Commonwealth Stationers]. Krizik took us to court on the unequal clause and we beat him and we awarded the project to [Commonwealth Stationers].¹⁶⁷

Thus, rather than simply writing the specifications restrictively, Krizik wrote them unintelligibly, and the attempt to garner the contract backfired. William Masiello, angry about the specifications, about Krizik's plan to submit a grossly inflated bid, or about other dealings with Krizik, finally advised the county commissioners (by a 1-29-73 letter of his employee, Wayne Salo) that the low bidder (Commonwealth Stationers) did fulfill the specifications, and the commissioners awarded the furniture contract accordingly.¹⁶⁸ When Krizik and Corrigan, Inc. subsequently took the matter to court, suing Commonwealth Stationers and the County Commissioners on the grounds that Commonwealth's bid did not meet the specifications, they lost.¹⁶⁹

Following the controversy, William Masiello routinely used Arthur and Julius Palley to draw up specifications for furnishing the Gardner Courthouse (1974-76), Belmont Towers (Worcester Housing Authority, 1973-74), and the Westboro Courthouse (additional furnishings after construction was completed), and Commonwealth Stationers received contracts on all of these projects.¹⁷⁰ One of the contracts they received, the Gardner Courthouse, provides a particularly graphic example of the advantage enjoyed by a supplier who writes specifications tailored to its own line of furniture, and the discretion of an architect in ruling out other furniture bids as unequal.

When Gardner Courthouse furniture bids were received, the apparent low bidder was Krizik and Corrigan, Inc. However, Wayne Salo of Masiello and Associates wrote the County Commissioners a lengthy, detailed review of the bids and recommended the award of the bid to Commonwealth Stationers, based on Krizik and Corrigan's use of "incompatible" designs and substitutions which did not fulfill the letter of the specifications.¹⁷¹ (See letter and resulting vote of

Worcester County Commissioners in Appendix 20-21.) Even though Krizik and Corrigan did not bid on all items, the architect could have recommended that it be awarded the contract for those items for which it did submit the low bid. In this case, however, that option was not followed and Commonwealth Stationers received the overall furniture contract, the largest in the Worcester County projects designed by the Masiello firm.

(b) What was given in return: William Masiello told the Commission's investigators that, in return for being permitted to write the furniture specifications, Charles Krizik gave him a \$7,500 "commission."¹⁷² Frank Masiello also remembered receiving money from Krizik out of the allowance on the Milford project.¹⁷³ However, both were uncertain as to the details of how the money was handled, and neither gave any sworn testimony on the subject.

In an unsworn interview, Charles Krizik admitted writing the specifications on the first four Worcester County Courthouses and the jail, but denied making any payoffs or deals, or even paying anyone for being allowed to write specifications; he said that County Commissioner Tivnan wanted Krizik to write the specifications so that the county would not have to pay him to do so.¹⁷⁴ (It should be pointed out that the architect was already being paid to write these specifications.) An audit of Krizik and Corrigan's incomplete financial records, summoned by the Commission, turned up several possible instances of cash generation, but was inconclusive and the records did not cover the time period during which cash payments allegedly occurred (1968-72).

Krizik did admit to purchasing political fundraising tickets from William Masiello on a regular basis, worth a total of about \$1000 over the years; he recalled buying tickets for Worcester County Commissioners Aspero, Tivnan, Cassidy, [Walter] Kelly, and Senator James Kelly.¹⁷⁵

In 1972, when the Masiello firm moved its offices into the Mechanics Tower in Worcester, Frank and William Masiello visited Krizik and Corrigan's premises to select new office furniture for their quarters.¹⁷⁶ They picked several thousand dollars' worth of desks, files, chairs and pictures, which were delivered to the Mechanics Tower and utilized. None of the items were ever paid for however. In an interview, William Masiello intimated that he considered the furniture as a gratuity from Krizik,¹⁷⁷ whereas Krizik maintained in his interview that the Masiellos charged the furniture and he expected the bill to be paid.¹⁷⁸ The point became moot, however, when after the award of the Worcester County Jail contract to Commonwealth Stationers, Krizik sent over a truck and repossessed all of the furniture in Masiello's offices.

The repossession virtually ended Krizik's relationship with the Masiello firm, just as a relationship was developing between Commonwealth Stationers and the Masiello firm. William Masiello testified about the arrangement he made with Arthur Palley of Commonwealth Stationers on the Worcester County Jail projects:

. . . During the final stages of the Worcester County Jail Project a bid for furniture and furnishings was advertised by our firm. Prior to the bid being received by the County Commissioners I had made a deal with Art Palley, Arthur Palley. The deal was that I would receive \$5,000 in cash if in fact he was a low bidder. Mr. Palley, or I should say Commonwealth Stationery were in fact the low bid. Over the period, I believe it was May of 1972, correct me if I'm wrong, through I would say September of 1973 Mr. Palley paid me a sum of \$4,500 in cash in units of \$500, sometimes it was five, sometimes it was 1,000, sometimes it was 1,300 . . . 179

When first interviewed by Commission staff in October, 1979, Julius Palley (brother of Arthur) said that he never gave William Masiello any kickbacks in return for contract awards.¹⁸⁰ When Arthur and Julius Palley were interviewed in May, 1979, Julius stated that, after performing their part of the Worcester County Jail project, Commonwealth Stationers had trouble getting paid by the county; Arthur stated that he approached William Masiello about the problem and agreed (at Masiello's request) to pay Masiello \$4000-5000 if he could expedite the payments. Julius denied any knowledge of this arrangement or of any other kickback agreement.¹⁸¹

Finally, when interviewed alone, Arthur Palley admitted that both he and Julius met with William Masiello prior to the award of the contract, and agreed that, in return for Masiello's assistance in obtaining the contract for them, they would pay him \$4500-5000 after they started receiving their payments from the county. Arthur outlined the method of cash generation as a combination of: (1) cashing corporate checks made out to himself; and (2) using cash receipts from sales at the store which were not recorded on the books of Commonwealth Stationers. He stated that he would place the cash in a red cardboard envelope, \$500 to \$1000 at a time, and carry it himself to Masiello's office where the envelope was given to either William Masiello or his secretary, Audrey Rawson. This happened on about five occasions, usually in response to a call from Masiello, saying he needed the money. Arthur Palley denied any knowledge of what William Masiello subsequently did with the money.¹⁸²

Arthur Palley produced some of the cancelled checks he used to obtain cash for Masiello and they indicated payments made in June and August, 1973, following payments received from Worcester County for the jail contract. Some were drawn on the accounts of Commonwealth Stationers, and some on Deerfield Press, Inc., another entity owned by the Palleys. They were written in pairs for odd amounts which, when added up, totalled a round figure. (Sample checks are included in Appendices 22-25.)

Because of the Palley brothers, Masiello's offices did not remain unfurnished for long. William Masiello ordered office furniture from Commonwealth Stationers, according to Julius Palley, and never paid for it. He also ordered supplies, artwork and printing which, combined with the furniture, ran up a bill of at least \$3500. According to Julius Palley, this bill was never collected because William Masiello kept mentioning new projects for which Commonwealth Stationers could supply furniture; this caused Palley to back off and not press his claim. The debt was eventually written off.¹⁸³

The Palley brothers were also willing purchasers when William Masiello needed to sell tickets to political fundraising events. Julius Palley recalled buying tickets for Sheriff Joseph Smith of Worcester County and Senator James A. Kelly, among others, and spending a total of \$400-500 over the years from personal funds (his own and his brother's) for such purposes.¹⁸⁴

This area of contract awards provided another example of the ease with which corrupt suppliers could be found to keep the system going. When William Masiello had a disagreement with one, he simply found another who was willing to write specifications, pay a kickback, buy tickets, seed his lawn, give him furniture, or whatever else was necessary to get the job. The firms were interchangeable, because the costs were usually passed on to the taxpayers.

E. Security Windows: The William Bayley Company

1. The trade.

Security windows are specially manufactured windows made of stainless steel or aluminum and used in projects such as jails, schools and other public buildings in which protection is an important factor.

2. The firm.

The William Bayley Company of Springfield, Ohio manufactures security windows out of steel, aluminum and stainless steel, and is the top U.S. manufacturer specializing in prison windows.¹⁸⁵ The firm supplies about 80% of the prison projects in the country, but does very little residential work.¹⁸⁶ Its work on federally-funded projects has increased over the last ten years to a volume of about \$2-3 million per year. In contrast, its work in Massachusetts has decreased over the last ten years, averaging \$100,000-200,000 per year; of that work, approximately \$750,000 was generated from projects designed by the Masiello architectural firm.¹⁸⁷

The chairman of the board at Bayley is John Lefevre, former area representative for the Northeast and sales manager.¹⁸⁹ The manufacturer's sales representative in Boston is currently Joseph Blasetti, who acts on a retainer basis; before 1976, the firm was represented by Wills and Hill of Boston.¹⁹⁰

Among the Massachusetts projects supplied by the company were prison buildings at MCI-Concord, schools in Worcester and Salem, the Middlesex County Courthouse, the Worcester County Jail, and Southeastern Mass. University.¹⁹¹

3. Scope of Study.

The Commission's research into allegations made by William Masiello about the Bayley Company was limited by the fact that Bayley is located outside Massachusetts. The firm produced some project records from its Ohio offices but no financial documents. The Commission's staff was able to supplement this with records of the BBC, Worcester County and the Masiello firm, namely contracts, bids, specifications and correspondence. However, the crux of William Masiello's allegations concerned the existence of an ongoing kickback agreement, and the absence of Bayley's financial records made it impossible to substantiate this allegation. Thus the Commission relied primarily upon project documents and personal interviews to establish the history of bidding and contract awards, primarily for MCI-Concord projects.

4. Investigative Results

(a) How the contracts were awarded. Under Massachusetts state law, contracts for metal windows on state construction projects are awarded through a system of filed sub-bids, administered by the BBC or other appropriate awarding authority. William Masiello testified that, despite this restriction, he was able to channel the subcontracts to Bayley by using proprietary specifications¹⁹² -- those which described a unique product or unique features made only by Bayley. Joseph Blasetti, in his interview with the Commission's staff, stated that the Bayley firm did window design and drawings on numerous Massachusetts state projects, working with the BBC and architects, and setting budget figures before the bidding stage.¹⁹³ John Lefevre told the Commission's interviewers that the Bayley Company wrote specifications on projects designed by the Masiello firm, and in doing so, specified its own product.¹⁹⁴ In this way, competitors were discouraged or completely eliminated from bidding.

Review of the specifications and bids obtained by the Commission confirmed the effectiveness of using proprietary specifications. Certain brand characteristics of the Bayley product, such as use of steel or higher gauge aluminum construction than that used by other manufacturers, and factory-installed weatherstripping, appear in the specifications. Although proprietary specifications were supposed to be approved in writing by the awarding authority, justifying their restrictiveness, no such documentation was found; the proprietary specifications were simply put out to bid.

The result was a lack of bidders. On MCI-Concord project P61-1 #2, Bayley was initially the sole bidder; when the contract was rebid, two other firms submitted bids but could not meet the specifications as cheaply as Bayley, and Bayley won the contract.¹⁹⁵ On P61-1 #4 at MCI-Concord, Bayley was the sole bidder at \$289,982 and received the contract without a second round of bidding being conducted.¹⁹⁶ On P61-1 #9C, Bayley was the sole bidder again.¹⁹⁷ On this project, however, an internal BBC memo written the day after the bids were opened suggested that the specifications were changed at the last minute by Bayley, at Masiello's direction, in a manner both confusing and restrictive. (See memo in Appendix.)¹⁹⁸ And approximately one week before bids were to be submitted, a competing window manufacturer's representative wrote to the Masiello firm to note the restrictiveness of specifications which prevented it from bidding (see Kehas letter in Appendix).¹⁹⁹ Perhaps because the restrictiveness in this set of specifications was so blatant, the contract was put out to bid a second time²⁰⁰ and five firms were specifically invited to bid.²⁰¹ The result was that only two of the firms notified bothered to respond. Again,

Bayley received the contract as low bidder.²⁰²

In reviewing the bid documents and correspondence summarized above, the inconsistency of BBC procedure became apparent. In some cases where Bayley was the sole bidder, the contract was put out for a second round of bidding (P61-1 #2 and #9C); in another case (P61-1 #4) it received the contract without further bidding. Ordinarily, if there are fewer than three bids and they are substantially higher than the budget figure or allowance, they are rejected under M.G.L. c.149 44D. However, on Project P61-1 # 9C, Bayley's price was over \$69,000 more than the allowance for windows, but it received the contract nevertheless.

The decision as to whether or not to accept bids, and whether or not to allow proprietary specifications ultimately rests with the administering agency. However, William Masiello made it clear in his testimony that the BBC relied heavily on the architect's judgement in allowing proprietary specifications and, generally, in supervising contracts:

Q. ... it is up to the architect to make the recommendation and justification for allowing this proprietary spec? ... do you know whether [the BBC] scrutinized it independently as a regular practice or not?

A. That is what the Commonwealth hires the architect for, to scrutinize it more closely than they do.

Q. That is what enables them in that situation to direct the contract to Bayley...?

A. That's right.²⁰³

... it is pretty difficult for the BBC to supervise right. So it is left up to the architect. Yes, we are the overseers.²⁰⁴

The reliance by the BBC, or any public agency, on the architect to give sound, independent advice was often misplaced in the case of the Masiello firm. As brought out in succeeding paragraphs, William Masiello was often motivated by something besides the best interests of the Commonwealth when he (or his representatives) advised the administering agency.

(b) What was given in return: William Masiello further testified before the Special Commission on the subject of his reasons for using proprietary window specifications:

Again, I told you Bayley windows was [sic] a prison window ... [for] which a specification that we could write [was] proprietary as I indicated to you and because of it you could build in a little something...²⁰⁵

He went on to testify what "little something" he was able to arrange with John Lefevre of the Bayley Company:

... Between us any time I wrote a proprietary spec that he wanted a contract [for], [it was agreed] that he would return to me ten percent of the bid. I believe it was started on ... [project] 9A, where the price was \$51,475.

... On 9A he did in fact give me \$5,100, 42 of which he gave me [in] a check with the sum of \$4,200 made out to a Pilgrim Industries [which] I gave to Mr. George Basile and he cashed the check, retained 10 percent for himself and gave me the balance.

Q. Mr. Basile was to serve as the agent through which the money would be laundered... ?

A. That's correct.

Q. Now, the Concord farm dorm [P61-1 #9C], do you recall that project or the Chandler [Oxford] Winslow School [in Worcester]?

A. I don't recall. I know those were the only two instances or three instances that I received anything from Bayley. The remainder I would like to say is still outstanding...²⁰⁶

Masiello was uncertain as to whether, for each particular contract, the Bayley firm was able to afford paying him because they deviated from specifications or their price was inflated. As he said, "All I know [is] I had a ten percent fee kickback from them."²⁰⁷

William Masiello did recall one occasion on which Bayley did not fulfill specifications. He related how, at an American Correctional Association convention in Miami (held in August, 1971), someone from Bayley approached him about eliminating thousands of required welds from windows Bayley was then supplying at MCI-Concord. The welds were omitted with Masiello's approval, saving Bayley thousands of dollars. For this favor, William Masiello said he received \$1,000 (from Bayley) which was channeled to Senator James A. Kelly.²⁰⁸

The Commission's staff consulted records of MCI-Concord projects in which both Bayley and the Masiello firm were involved, and from the time frame suggested by Masiello, surmised that the contract in question was P61-1 #4, for construction of the gymnasium, chapel and industries buildings.

Although John Lefevre, the Bayley official mentioned in William Masiello's testimony, was from Ohio, and thus outside the Commission's legal reach, the Commission's staff was able to interview him briefly while he was in Massachusetts on other business. During that interview, he was questioned as to the existence of an ongoing ten percent kickback agreement with William Masiello, and about the deviation from the specified welds at MCI-Concord. Lefevre repeatedly denied making or being asked to make any agreement to pay money to either Frank or William Masiello, or a third party, and denied that he had paid a kickback of any amount as part of such an agreement.²⁰⁹

Lefevre said he had anticipated being questioned about the welds at Concord, and had consulted his records. He admitted having met the Masiellos at an ACA convention in Miami, and admitted that about half the specified welds were omitted by agreement, but insisted that the Bayley firm saved no money in doing

so and, in fact, had supplied a better window than required. Again, he denied that any payment was made in return.²¹⁰

Because the financial records of the Bayley Company remained unavailable to the Commission, it was not possible to confirm either Masiello's or Lefevre's story. But because many of the surrounding details of William Masiello's account were reiterated independently by Lefevre, neither did the Commission discount William Masiello's version.

F. Brick: Provost Company, Inc.

1. The firm and its trade.

The Provost Company, run by Kenneth Provost in the 1970s and by his father William before that, was a distributor of brick and building materials²¹¹ operating out of Waltham and Watertown, Mass. As such, it did not manufacture or install brick but simply acted as an exclusive distributor of certain kinds of brick in the New England area.²¹² Its products, like any brick, were distinguishable by their color and other properties such as absorption and strength, determined by their particular clay content and manufacture.²¹³

The Provost firm developed a substantial business relationship with Masiello and Associates between 1973 and 1977, when Charles Mezzano, a longtime friend of William Masiello, became a salesman for Provost. As described by Kenneth Provost in testimony before the Special Commission, William Masiello told him that if he (Provost) took care of Mezzano, Masiello would see to it that Provost products were used on Masiello-designed projects.²¹⁴ In this manner, William Masiello was able to obtain a measure of job security for his friend; as will be examined in succeeding paragraphs, he obtained financial advantage for himself at the same time.

2. Investigative Results

a. How the Contracts Were Awarded

William Masiello testified:

... [T]he only area that BBC will let you carry [as] an allowance item was in brick, the brick portion of the allowance, but otherwise, everything had to be spelled out and had to have very qualified manufacturers and they all had to be equal.²¹⁵

Thus, at the outset of most state building projects which used brick, the brick was removed from the competitively-priced masonry sub-bid and was given a budget of its own. Masiello went on to describe how that budget was determined:

So, what you did is you put it out on a brick allowance, and in this particular case Mr. Provost would tell me exactly how much brick it is going to cost shipped f.o.b. on the job site. Something would be added to it and that is what we were using as an allowance item.²¹⁶

William Masiello liked brick; as he said, he mandated brick in all the buildings designed by his firm because he thought "all the buildings that look terrible are made out of concrete... a brick building is much more attractive than a cold concrete building."²¹⁷ So, whether for these reasons, concern for Mezzano, financial advantage or all three, Masiello channeled a significant amount of business to the Provost Company.

William Masiello consulted with Kenneth Provost in setting an allowance price. At the same time, he had his own employee, Joseph Miller, draw up the brick specifications after looking over samples presented by Mezzano and in some cases obtaining written specifications of Provost's brick.²¹⁸ The specifications were, in effect, proprietary, since the colors and other properties mentioned were unique to the product line carried exclusively by Provost.

With an allowance predetermined by the architect with the BBC's sanction, there was little need for competitive pricing. And with specifications tailored to a product carried exclusively by one supplier in the entire region, there was no opportunity for competitive pricing. These factors made it possible for William Masiello to channel the award of brick contracts at his discretion and, in doing so, to name his own price as part of the contract.

b. What Was Given in Return

When Kenneth Provost testified before the Commission, he was questioned about the quid pro quo imposed by William Masiello:

Q. ... Sir, did you at any time have any conversation with Mr. William Masiello concerning what Mr. Masiello expected or wanted from Provost in exchange for the efforts he was making specifying Provost brick on the jobs that he was the designer for?

A. Yes, I did.

Q. Can you tell us the substance of that conversation?

A. Yes. He asked -- he said that he would specify our materials if in the future when he had political contributions to make we could help him.

Q. Now, sir, did you in fact make political contributions at Mr. Masiello's request?

A. Yes.²¹⁹

Provost and Mezzano testified that the Provost firm supplied brick for the following projects: Worcester Housing for the Elderly (Elm Park Towers), Shrewsbury Housing for the Elderly, Taunton Housing for the Elderly, Leicester Housing, the Dudley-Harrison Fire Station, MCI-Concord, the Federal Records

Center in Waltham, and the Chandler/Oxford/Winslow School in Worcester.²²⁰ Kenneth Provost and William Masiello testified specifically about two kickback arrangements which arose from these contracts, one from the Dudley-Harrison Fire Station and the other at MCI-Concord (P61-1 #4).

The Dudley-Harrison example is treated more fully in the preceding text about Suffolk County/City of Boston (See Volume 3.) Briefly reiterated, William Masiello testified that due to a change in plans, which was not communicated to the brick suppliers, more brick was ordered and delivered to the job site than was needed. When the manufacturer refused to take the brick back, William Masiello used his influence with the general contractor and the administering agency to process a change order, giving the Provost Company an additional \$3,300.²²¹ Of this amount, Provost (through Masiello or Mezzano) kicked back \$500 to be given to Kevin White's campaign.²²²

Similarly, at MCI-Concord, the allowance carried for brick was originally \$80 per thousand. When during the construction of H, K and L buildings (P61-1 #4) Mr. Provost told William Masiello that he (Provost) couldn't make a "donation" to Masiello because there was not sufficient profit to do so, Masiello processed a change order increasing the allowance to \$90 per thousand.²²³ According to the change order in the BBC files, this added \$1535.64 to the contract.²²⁴ Masiello did not specify in his testimony what portion of this was returned to him, nor whether it was passed on to another individual.

Both Provost and Mezzano testified that the Provost firm indirectly contributed \$500 to Senator James Kelly's Scholarship Fund (which was initiated in 1976).²²⁵ When William Masiello asked Mezzano to contribute, he did so in cash and was later reimbursed by the Provost Company. Mezzano said he felt obligated to buy tickets for this scholarship fund dinner even though it had occurred a month before, because Masiello had given him and the Provost Company so much work.²²⁶

There was another occasion which arose in 1976 in which Provost apparently felt "obligated" to give. He testified that William Masiello asked that he take care of his friend Mr. Edmund Mangini, who needed brick to build a barbecue or wall in his back yard. Provost knew that Mangini was an official in DCA, since the Provost firm had supplied brick to several housing projects. Provost agreed, and had \$218 worth of brick delivered to Mangini's home (documented by a signed invoice he provided to the Commission) for which Provost paid but was not in turn paid by Mangini.²²⁷

The supplier system carried a high enough profit margin, paid from the public till, to pay not only for political contributions to public officials and kickbacks to the architect, but all manner of favors -- swimming pool

landscaping, house additions, fancy panelling and barbecue pits. The possibilities were almost limitless.

G. Athletic Equipment: Sun Lea Sports Company

1. The firm and its trade.

Sun Lea Sports has been owned and managed by William Gulvanesian in Winchester and Malden since 1952, later becoming a subsidiary of another entity owned by Gulvanesian, the House of Sports, Inc., of Waltham. Sun Lea deals primarily in wholesale sporting goods, and public contracts have provided 60 to 70 percent of its business over the last ten years. The firm supplies such items as bleachers, basketball nets, and backboards to schools, parks and recreation departments.²²⁸

2. Investigative results.

Although a substantial portion of Sun Lea's contracts were from the public sector, the Commission examined only one of the firm's contracts, that for the Worcester County Jail. The investigation was initiated when, in a private interview with the Commission's staff, William Masiello disclosed that he had accepted rigged bids and a kickback from the athletic supplier on this contract.²²⁹

By searching records of bids and correspondence, interviewing Gulvanesian, and ultimately bringing William Masiello and Gulvanesian to testify, the Commission learned that Gulvanesian originally met William Masiello through a mutual friend, Gregory Kollegian, a supplier of concrete products often used on Masiello-designed projects.²³⁰ Masiello visited Gulvanesian at his store and told him of the upcoming jail project, asking if he wanted to bid on the gym equipment. When Gulvanesian expressed interest, Masiello indicated that he himself might want something out of the contract; Gulvanesian said he was reluctant and Masiello reassured him that it would turn out all right.²³¹

Unlike other suppliers used by the Masiello firm, Gulvanesian had no role in setting the allowance or writing specifications; they were simply sent to him when it was time to bid, and he was unaware of the allowance figure,²³² which was in fact \$33,000.²³³

Gulvanesian testified that he analyzed the specifications and calculated his bid at cost plus fifteen percent, which amounted to approximately \$26,000 total. Before the bids were due, William Masiello again visited Gulvanesian's store and, upon hearing what Gulvanesian's bid would be, stated that he (Masiello) wanted \$2,500 of that total as a kickback. Gulvanesian protested that it would eat up most of his profit and Masiello told him to raise his bid. When Gulvanesian

offered to bid \$29,000, Masiello said that it would be all right but that in that case he wanted \$3,500. He told Gulvanesian to obtain the three bids that were necessary. Gulvanesian assured him that he could obtain three bids easily enough since he owned two companies himself and had a friend in the business who would give him blank stationery to make up the third bid.²³⁴

The bids were opened in early March, 1972, after Gulvanesian mailed them to the Masiello firm.²³⁵ Gulvanesian's bid for Sun Lea was lowest, at \$29,187.23. House of Sports and Lee Chisholm (a former partner of Gulvanesian's at Sun Lea) submitted higher bids at Gulvanesian's direction.²³⁶

Gulvanesian testified that his agreement with Masiello stipulated that the \$3,500 was to be paid in cash after Sun Lea received its final payment from the general contractor.²³⁷ He stated that William Masiello must have been aware of the general contractor's payments because as soon as the final one arrived, sometime in 1973, Masiello called to say he would be down to pick up the cash at Gulvanesian's store.²³⁸

Gulvanesian's recollection of subsequent events differs from William Masiello's. Gulvanesian testified that he cashed a corporate check for \$3,500 and gave the cash to Masiello at the store.²³⁹ Masiello testified that Gulvanesian had difficulty getting cash out of his firm and instead provided Masiello with \$3,500 of sporting goods -- hockey sticks, basketball nets, clothes, and skis, which Masiello gave away "to everybody."²⁴⁰ Because Gulvanesian's financial records had since been destroyed, neither version was verified, and the Commission could only speculate that either Masiello did not want to admit to receiving the money and perhaps giving it to someone else, or that Gulvanesian was reluctant to admit knowingly distributing a kickback to anyone but Masiello.

Gulvanesian did offer to provide athletic equipment to Masiello at cost in the future, and the following year he received a phone call from Masiello, taking him up on the offer. Masiello sent a Senate page from the State House to pick up a dozen hockey sticks in September, 1974, and sometime later sent someone else to pick up another dozen, accumulating a bill of \$114.²⁴¹ The fact that the bills were made out lends credence to Gulvanesian's testimony that they were provided in addition to the kickback and he expected some payment; however, the bills are also consistent with William Masiello's assertion that the kickback itself was the sporting equipment he gave away to "everybody." In either case, Gulvanesian was never paid for these items.²⁴²

The testimony given by Gulvanesian and William Masiello did agree on one point, their last transaction. As related by William Masiello, the occasion was the result of a request from a legislator:

... Senator Kelly called me and this was after the \$3,500 had been used in sporting equipment and I believe it was on or about the time that he became a ski fanatic, and he asked me if I had connections with a sporting goods -- well, he knew about this one. I said well, go over and see him. I called up Mr. Gulvanesian and I told him that Senator Kelly was in fact going to go there and if he could discount some of the sporting goods for him.

Well, after Senator Kelly left, Mr. Gulvanesian did call me and presented me a bill something close to \$1,400.

I didn't want to make any waves and I agreed through Mr. Gulvanesian that I would someday pay it. I was not -- I had no idea that the Senator was going to charge \$1,400.

Q. The Senator did not pay you for the sporting equipment?

A. Nobody paid me, Mr. Gulvanesian either. It has never been paid. I think he stated that here.²⁴³

Gulvanesian, aided by an invoice of the transaction, remembered and described the incident in detail. He testified that, on or about January 31, 1976, William Masiello called to say he was sending a "Mr. Kelly" to the store, that Gulvanesian should take care of him, and Masiello would be down to take care of the bill. When Kelly appeared and identified himself, he was accompanied by about four teenagers whom Gulvanesian presumed to be Kelly's children. Gulvanesian then furnished them with five pairs of skis, five pairs of bindings, four pairs of ski boots, four ski boot carriers, a down jacket, five sets of safety straps and five sets of ski straps, for a grand total of \$1,389.²⁴⁴

When Gulvanesian sent the bill to Masiello, he discounted it to \$900, his cost, as previously promised, and added the price of the yet-unpaid hockey sticks, for a total of \$1,114 due. Although he subsequently called William Masiello to press for payment and Masiello admittedly intended to pay, Gulvanesian never received payment or had any further contact with him. The result was that his profit from the Worcester County Jail project was eroded to six or eight percent,²⁴⁵ while Masiello and his friends enjoyed \$4,500 worth of cash or sports equipment -- as another fringe benefit of doing business with the Commonwealth.

H. Conclusion

The cases just summarized do not represent the full range of the Commission's investigation: there were also electrical suppliers who omitted required conduit;²⁴⁶ laundry equipment suppliers who wrote specifications around their own equipment, then gave kickbacks when they received the contracts;²⁴⁷ electronic equipment suppliers who were allowed to deviate from specifications in return for free television sets and four-figure checks;²⁴⁸ kickbacks made through intermediaries, phony invoices, more political contributions, and many other variations on the theme.

But it is not necessary to report on every contract or reiterate every interview for the pattern to become evident. Those who wanted work and sought a competitive advantage were willing to pay for obtaining that advantage, particularly when it was possible to shift the cost elsewhere. In most of the situations described in this report, the cost was ultimately shifted to the taxpayers who were so poorly represented.

The pattern emerges as a circle: business people gained access to legislators and other officials by paying them in the form of campaign funds, meals, bribes and other favors. Those public servants in turn dispensed largesse in the form of government appropriations and contracts which paid contractors, suppliers and architects. The contractors and others then had more money to pay the public officials who kept the contracts coming. Because it was the public's money being spent -- and at times wasted -- it was as if nobody's money was being spent, since the taxpayers were invisible and their interests abandoned by public servants. As William Masiello put it, "if anybody is going to steal, if they leave something on the table, they are going to steal it. If it is out there, they are going to grab it." ²⁴⁹

And grab they did. Hardware, added-on rooms, furniture, cash, campaign funds, skis, rhododendrons, and all manner of gratuities were grabbed while the bill went to the state comptroller, the county treasurer, and in the end, all the taxpayers.

DRISCOLL WEBER

What follows is a profile of Driscoll Weber, Inc., a supplier of kitchen cabinets, which thrived on state contracts during several years when kitchen cabinet contract awards were controlled to a great degree by architects. The formula for the firm's success contains many familiar ingredients: regular, generous and illegal campaign contributions to a particularly powerful local fundraiser for a gubernatorial candidate; kickbacks or commissions to housing authority members; and payments to a Department of Community Affairs field representative responsible for monitoring and reviewing contract awards of the local housing authorities and the installation of the kitchen cabinets. [Payments were also made to or at the request of architects who used the supplier's product specifications, and who made recommendations for the contract award].

Because of the great number of contracts awarded to Driscoll Weber, and the number of years over which such contracts were awarded, it is difficult to pinpoint a precise quid pro quo for each contract award. [The aggregate detail, however, is overwhelming]. It shows a business on the brink of financial collapse temporarily reversing its fortunes through the acquisition of millions of dollars in state contracts. It reflects a system in which 90% of all such contracts awarded on DCA housing for the elderly projects from 1972-1974 went to Driscoll Weber. It reveals a pattern of internal cash generation, primarily through purported payments to employees of phony commissions, to provide the funds with which to fuel the firm's new-found success. And it portrays a relationship with designers and DCA employees closely tied to Driscoll Weber's success with kitchen cabinet supply contracts.

Driscoll Weber,* located at 201 Rowland Street, Springfield, MA, was incorporated in March 1948. Its declared business purpose was wholesale heating, plumbing and appliance sales. Samuel Weber, president of Driscoll Weber, Inc., and Frank Driscoll, vice president, each owned one hundred shares of common stock. Mr. Weber also owned nineteen shares of the preferred stock. In March of 1973 Mr. Weber died, and Frank Driscoll became not only the president of the corporation but also the sole stockholder.

Employees of the corporation remained the same from August 1948 until May 1972, at which time Charlotte Roth was hired and became the secretary/bookkeeper. The other employees of the corporation were Lawrence ("Larry")

*Driscoll Weber is used herein to mean Driscoll Weber, Inc., and its related entities including Driscoll Weber Associates, Driscoll Vickery Associates, and Driscoll Weber d/b/a DWV Associates. All of these entities filed income tax returns and maintained books of original entry as one entity.

Vickery and Edward Beaulieu. (Both Roth and Beaulieu are deceased.) Their duties primarily concerned maintaining the warehouse showroom and delivering goods. The corporate books and records were maintained by Samuel Weber until his death in March 1973, when Charlotte Roth assumed this function. Her duties included making deposits at the bank, maintaining the checkbook, and keeping the formal records of the corporation. Larry Vickery's position and status also changed as a result of Weber's death. He was named the vice president of the company, and became actively involved in soliciting business.¹

THE DRISCOLL WEBER INVESTIGATION

The investigation of Driscoll Weber began in the fall of 1979, as an outgrowth of the Masiello & Associates investigation described earlier in this Volume of the report. Certain employees of the Masiello firm had been granted informal immunity. One of these employees, Raymond ("Pete") Allard, detailed in interviews with Special Commission staff how fraud through suppliers occurred, and repeatedly spoke of Driscoll Weber as an example of this kind of fraud. Members of the Special Commission staff spoke with other sources familiar with the Driscoll Weber firm, and found that the Massachusetts State Police Contract unit had undertaken an investigation of Driscoll Weber in January, 1977, as a result of Department of Labor & Industries decisions affecting one of Driscoll Weber's competitors, Wood-Hu Kitchens.

The Special Commission summoned the books and records of Driscoll Weber Associates on October 19, 1979. The first batch of records received were for two fiscal years: August 1, 1973 to July 31, 1975. Cancelled checks for the Driscoll Weber Associates bank account for those two years were examined, and the preliminary results indicated to the Commission staff that this was a situation which required more extensive investigation. A substantial amount of cash had been generated by Frank Driscoll and Larry Vickery by cashing checks that were issued to them by Driscoll Weber Associates and charged on the books to "commission" expenses. These cash generation checks, when examined, also revealed the existence of additional Driscoll Weber bank accounts which the Special Commission had not even been aware of. From November 1979 until February 1980 the Special Commission summoned and received the balance of Driscoll Weber's

records for the years 1968-1978, and for records of the other bank accounts in operation during that period: the Driscoll Vickery Associates account, the Driscoll Weber d/b/a DWV Associates account, and the Driscoll Weber Special account. Morris Meyers, a member of the accounting firm for Driscoll Weber (Meyers Brothers, Handelsman, Menzel & Adeletti), was personally summoned to appear before the special Commission; the accountants' "work product" was summoned as well. Finally, Frank Driscoll's personal income tax returns for 1974, 1975, and 1976 were summoned.

An analysis of the Driscoll Weber checks issued to Larry Vickery and recorded on the books as "commission" expense showed that a substantial portion of them had been second-endorsed by Frank Driscoll or by the late Charlotte Roth, then the secretary/bookkeeper of the firm. Moreover, Driscoll Weber had issued a series of checks to Larry Vickery at times when personal income tax payments were due; this discovery raised the question of whether the tax checks to Vickery were bona-fide loans or whether, instead, they were paid to help him offset the inordinate amount of income the books reflected because he did not, in fact, keep the cash.

This was the first question the Special Commission set out to answer. Larry Vickery's tax returns never became available, however, because he no longer was a client of the Meyers Brothers firm, and that firm's policy is to destroy the records of accounts that have become inactive. Francis Butler, an accountant formerly (but no longer) employed by the Meyers firm, had been assigned to the Driscoll Weber account during the years 1973 through 1975. He was interviewed by Special Commission staff on December 9, 1979, at the time when the Special Commission had been granted its first six-month extension by the legislature, prolonging its life until June 30, 1980. Meanwhile, information from Frank Driscoll's personal bank accounts, under summons, began to arrive at the Special Commission's offices.

The Special Commission also reviewed DCA project files for the Chapter 667 program for the period January 1, 1970 through December 31, 1977, and compiled profiles of projects for which Driscoll Weber had supplied cabinets. These profiles proved to be very useful because they revealed certain individuals to be DCA employees who had earlier appeared to the investigators to be performing services for Driscoll Weber -- because they were receiving "commission" payments from Driscoll Weber.

FINANCIAL PROFILE OF DRISCOLL WEBER

With the exception of three fiscal years 1972-1975 (Driscoll Weber's fiscal year was August 1 through July 31), Driscoll Weber was a company in poor financial condition. This is most clearly illustrated by an examination of Driscoll Weber's financial data through fiscal 1972. Driscoll Weber's gross sales, i.e., volume of business, in fiscal 1971 amounted to only \$69,393.² In order for the company to meet its financial obligations, the corporation raised funds from the following sources: money borrowed from Weber's relatives;³ anticipated receipts pledged to its major supplier;⁴ and money borrowed from the Third National Bank of Hampden County, in exchange for notes issued to the bank, which were secured by corporate assets as collateral.⁵

This financial picture changed drastically in fiscal 1972. Gross sales increased by 617.02 percent or \$428,167 from \$69,393 to \$497,560.⁶ In fiscal 1973, gross sales amounted to \$521,629.⁷ These increases are directly attributable to the substantial increase of kitchen cabinet sales for Local Housing Authority (LHA) projects. In fiscal 1974 alone, the sale of kitchen cabinets for LHAs accounted for \$1,042,102⁸ or 96.5 percent of Driscoll Weber's gross sales of \$1,079,584.⁹ The following fiscal year Driscoll Weber's gross sales peaked at \$1,189,570,¹⁰ the firm's highest figure in ten years.

PREDOMINANT SUPPLIER OF KITCHEN CABINETS

Driscoll Weber's gross sales increased substantially from fiscal 1972 through fiscal 1975 because of its success in obtaining a substantial proportion of all the kitchen cabinet contracts awarded during these years by LHAs.

Process for Awarding Kitchen Cabinet Contracts

Local housing authorities are established in towns and cities to make application for, supervise construction of, and manage community housing projects. These housing projects encompass housing for the elderly, families, low income tenants, the handicapped and existing housing undergoing modernization.

The administering agency for LHAs is Massachusetts Department of Community Affairs (DCA), formerly the State Housing Board. The DCA is in charge of allocating funds to LHAs so that they may undertake housing projects. The majority of these funds is expended on the 667 program, which is housing for the elderly. Once the funds are allocated, the DCA then has various types of approval and supervisory power over the LHAs contract awards.

After an architect is selected by the LHA and approved by the DCA to design a given housing project, plans are drawn and specifications are written by the architect. Included among these are the specifications for kitchen cabinets. When a general contractor decides to bid on a project, his estimator determines how much it will cost to construct the building(s) according to the contract plans and specifications. For various reasons -- such as an absence of competitive sub-bids; or excessively high sub-bids; or the presence of "long-lead" items that will not be delivered until far in the future, by which time the prices may have changed -- not all items that are to be included in the building are priced at the time of the general contractor's bids. Instead, a stated dollar amount called an "allowance" is used. All bids include the allowance for that portion of the work that has not been already estimated, automatically making it a part of the construction contract. An exact amount for this portion of the work is determined later by the separate selection process, described in the next paragraph, which typically involves the architect, the LHA, and the DCA. During the years 1972 through 1976, kitchen cabinet contracts were awarded in this manner. When there is a difference between the actual cost of an allowance item and the allowance amount, which is a very common occurrence, a change order is used to adjust the allowance amount to conform to the actual cost.

After the general contractor has been awarded the contract, and the DCA has approved the LHA's award, the LHA through its architect requests bids for the supplying of kitchen cabinets. Ordinarily, such solicitations are published in

the Dodge Report* and in the local newspaper of the town or city in which the building is being constructed. On occasion, the architect solicits kitchen cabinet suppliers by phone or by mail for proposals. Interested kitchen cabinet suppliers can pick up the specifications at the architect's office after leaving the appropriate bid deposit. Then, if the supplier is still interested, a sealed bid proposal is prepared. In order for a proposal to be considered, it must be delivered to a designated place at an appointed hour. All the sealed bids received are then opened and reviewed at a meeting of the LHA. Often, sample cabinets from various suppliers are on display at this meeting.

The lowest qualified bidder to meet the specifications is ordinarily awarded the supply contract. Because the members of the LHA usually do not have the expertise to determine whether cabinets meet the specifications, the architect's recommendation is generally accepted without question. The LHA members vote to award the kitchen cabinet supply contract and forward the bid and vote information to the DCA. The DCA then either approves or rejects the award. When the DCA approves the award, the architect notifies the general contractor to enter into a contract with the approved kitchen cabinet supplier. On occasion, the housing authority and the cabinet supplier enter into a contract directly, bypassing the general contractor.

As mentioned above, in cases where the awarded and approved kitchen cabinet bid is greater than or less than the allowance for kitchen cabinets, a change order has to be issued. For example, a change order was required in Canton housing for the elderly project 667-2 when the architect, Robert Charles Associates, specified that the allowance for kitchen cabinets was \$26,000. DiLibero Construction Company was awarded the construction contract for \$1,487,000 which included the \$26,000 allowance for kitchen cabinets. Driscoll Weber was awarded the cabinet supply contract for \$38,797. This meant that DiLibero had to pay Driscoll Weber \$38,797 even though it was to receive only \$26,000. Change order #9 was executed on March 25, 1975, increasing the general contractor's contract price to \$1,500,757. This increase represents the difference between the allowance for kitchen cabinets and the actual cost to DiLibero Construction Company plus the contractor's 7 1/2 percent profit on the change order amount.¹¹

Should a local housing authority decide to purchase kitchen cabinets directly from the supplier rather than through the general contractor, a change order is issued deleting the entire allowance from the general contractor's contract price. The Sharon housing for the elderly project is an example of the deletion

*Construction industry trade journal which not only lists public design, construction, and supply contracts ready for the bid process, but also recaps and identifies successful bidders on previously available contracts.

of the kitchen cabinet allowance. The kitchen cabinet allowance was \$34,000 and change order #6 was executed on April 8, 1974 deleting the entire allowance from the general contractor's contract price. This arrangement is particularly advantageous to the cabinet supplier who no longer has to be concerned about general contractor's delays with payments and assessment of back charges. LHA's, by and large, pay within months; a contractor may take years to remit.¹²

Subsequent to the approval and award of the cabinet supply contract, the cabinet supplier must submit shop drawings to the general contractor who in turn transmits them to the DCA for approval. Ordinarily, the DCA representative responsible for such approvals is the construction adviser on the job site. In the case of Driscoll Weber, the firm then sends the approved shop drawings to its major supplier, Yorktowne Kitchens, which manufactures the cabinets and sends them directly to the LHA's project site. In its position of middleman, Driscoll Weber (as is true with any supplier) is responsible only for the delivery of cabinets and not for their installation.

Since 1976, the DCA has changed the way it administers the awarding of kitchen cabinet contracts. Those changes have included using standard agency-prepared specifications, and, alternatively, establishing minimum standard guidelines through form specifications to be used by the architect. The contractor has also been made responsible for including the actual cost, rather than an allowance amount, for supplying kitchen cabinets. From 1976 on, Driscoll Weber has not been a predominant supplier of kitchen cabinets for LHA projects.

Driscoll Weber's Record as Kitchen Cabinet Supplier

During the period January 1, 1973 through December 31, 1977, Driscoll Weber supplied kitchen cabinets to 92 housing for the elderly projects.¹³ In relation to all kitchen cabinet contracts awarded in housing for the elderly projects during that time, Driscoll Weber received a disproportionately large share of awards. This fact is clearly illustrated by an examination of calendar 1973 and 1974 awards and approvals.*¹⁴ In calendar 1973, there were 25 kitchen

*In determining what percentage of all DCA kitchen cabinet awards Driscoll Weber actually received, the Special Commission first looked to the DCA. The Special Commission learned that DCA does not maintain any central records concerning kitchen cabinet contracts. Kitchen cabinet contract information is only found in the specific project file.

Furthermore, kitchen cabinet contracts are awarded some time after the general contract; that time varies from contract to contract. Therefore, there was no obvious characteristic, such as the time of the kitchen cabinet award, which could be used in advance of inspecting individual DCA project files to determine the sample of files to be examined.

DCA did, however, have a central listing of dates on which it awarded contracts for financial assistance (e.g., a commitment of funds to construct a particular housing for the elderly project) and of the local housing authorities with whom these contracts were signed. Special Commission staff used this information to identify all contracts for financial assistance executed from January 1, 1970 through June 30, 1974. There are 131 such contracts for financial assistance. The contracts are set forth in the chart which is DW Appendix Exhibit 14. These 131 contracts were the pool from which all 1973 and 1974 kitchen cabinet awards were identified.

cabinet contracts awarded by LHAs and approved by the DCA.¹⁵ Driscoll Weber submitted bid proposals for 24 of these projects and received 23 of these awards, or 95 percent. In calendar 1974, 26 kitchen cabinet contracts were awarded and approved.¹⁶ Driscoll Weber received 19 of these awards. Therefore in calendar 1973 and 1974 Driscoll Weber received 42 of the 51 kitchen cabinet contracts that were awarded, or 82.3 percent.

The revenue received from these 1973 and 1974 cabinet contracts enabled Driscoll Weber to meet its current financial obligations, and also to cancel the notes payable previously issued in fiscal 1971. *¹⁷

Equally significant, Driscoll Weber received many contract awards even though it was not the low bidder. For example, of the 23 contracts awarded Driscoll Weber in 1973, Driscoll Weber was the lowest bidder on only three contracts, and the sole bidder of record on four contracts. For five of these 23 projects it could not be determined who the other bidders, if any, were. This leaves 12 of the 23 contracts awarded to Driscoll Weber when it was not the lowest bidder, including six contracts for which Driscoll Weber was the highest bidder.¹⁸

Architects' Use of Driscoll Weber's Specifications

Contract specifications must provide for competition among bidders by being drafted in such a way that at least three different manufacturers can meet them. When a particular product brand is named in the specifications, the specifications must include an "or equal" clause, ** which means that the product may be replaced by an item equal in quality, appearance, durability, strength and design. An "or equal" item must perform the same function and conform substantially to the detailed requirements for the original item.

As long as they include an "or equal" clause, architects can and do use specifications which name and describe a particular product. In this case, several architects used specifications for lines of kitchen cabinets supplied by Driscoll Weber.

Driscoll Weber supplied kitchen cabinets manufactured by Yorktowne. These included the Empire, Ambassador, and Spacemaker lines. (Some of these were manufactured by Yorktowne to Driscoll Weber specifications.) The distinct advantage to Driscoll Weber of having one of these cabinets specified is that there can be no question as to whether its cabinet meets specifications. Another

*Although these contracts were awarded to Driscoll Weber in 1973 and 1974, revenues from these awards were received by Driscoll Weber in 1974, 1975 and 1976.

**M.G.L. c.30, s.39M(b) requires that specifications must be drafted to provide an equal opportunity for all bidders to utilize more than one manufacturer so as to promote full competition.

supplier's cabinet, however, must be examined by the architect; judgment and discretion must be exercised by whoever makes the determination of whether that cabinet is "equal" to the one specified. All that takes time and effort. Furthermore, to the extent that another cabinet does not precisely meet specifications but possibly exceeds the specifications, it may be more expensive to supply. While having one's own cabinet specified does not in itself guarantee contract awards, it does lend a competitive advantage.

A number of architects on DCA funded housing for the elderly projects did in fact use as their kitchen cabinet specifications the specifications for Yorktowne cabinet lines supplied by Driscoll Weber.¹⁹ An analysis of the language of Driscoll Weber specifications makes this obvious. It is not surprising that in these cases Driscoll Weber frequently was awarded the supply contract. The following examples typify some of these instances.

Robert Charles Associates: Robert Charles Associates designed ten housing for the elderly projects in the Commonwealth of Massachusetts, as follows: Burlington 667-1; Cambridge 667-1; Canton 667-2; Fall River 667-1; Gloucester 667-4; Hudson 667-2; Medfield 667-1; Salem 667-5; Sharon 667-1; and Westport 667-1. Driscoll Weber was awarded the kitchen cabinet contracts for all ten projects. In order to establish a standard of quality, the kitchen cabinet specifications for the Hudson,²⁰ Medfield,²¹ and Canton²² projects were based on the "Empire" cabinet. LHA members ordinarily vote to award a cabinet supply contract to the lowest qualified bidder meeting the specifications based upon the architect's recommendation. Indeed, the architect's position is an influential one. For example, kitchen cabinet bids for the Canton 667-2 project were as follows:

McDonald & Son, Inc.	\$33,142
Driscoll Vickery Associates	38,797
Miles Plumbing & Heating	42,474

The Canton Housing Authority, acting upon the recommendation of its architect,* voted to award the kitchen cabinet contract to Driscoll Vickery Associates, and the DCA approved the award.²⁴

Driscoll Weber's cabinet could meet the specifications because they were Driscoll Weber "Empire" kitchen cabinet specifications. The Salem 667-5 project is another example in which Driscoll Weber was awarded the kitchen cabinet supply contract although it was not the lowest bidder. Sample cabinets were at the office of the Salem Authority for inspection and the Authority decided that the "only cabinets meeting specifications detailed by Architect was Driscoll Weber."²⁴

*The Canton Housing Authority noted: "It was the opinion of our architect that McDonald and Son, Inc., did not meet the specifications."

Masiello & Associates, Inc.: Another architectural firm which used Driscoll Weber's specifications as its contract specifications was Masiello & Associates, Inc. William Masiello, former owner of the architectural firm of Masiello & Associates, Inc., testified at a public hearing before the Special Commission on May 14, 1980, explaining how his use of Driscoll Weber's specifications worked to Driscoll Weber's advantage:

"[I]f I didn't have the allowance item, I would have a supplier write the specifications, what is known as a proprietary spec which means only he can furnish it and this absolutely assured him of getting the bid. I did this in the area of kitchen cabinets with Driscoll Weber. What we would do is he would supply me a kitchen cabinet specification that couldn't be duplicated other than with a Yorktowne cabinet so when the contractor did find a supplier that was lower than his bid and through my, (sic) namely, Mr. John Wackell who checked the kitchen cabinets, when they were presented to us, we could knock it down for a million reasons; too thin, no lamination on the inside, any number of reasons to meet the specifications until we just steered him right to Mr. Driscoll. That was another way it could be done."²⁵

Masiello & Associates designed the following elderly housing projects: Leicester 667-1; Shrewsbury 667-1; Belmont Street Housing for the elderly; Elm Park Towers Housing for the elderly; Taunton 667-1; and the Shrewsbury HUD elderly housing project. Driscoll Weber supplied the kitchen cabinets to all of these projects except for the Taunton 667-1 project.

The Taunton 667-1 project is also of interest because the Taunton Housing Authority did in, fact, award the contract initially to Driscoll Weber upon Masiello's recommendation.²⁶ The kitchen cabinet specifications used were approved by Michael Harrington, a DCA construction adviser assigned to this project.²⁷ But the award was overturned when a losing competing bidder, Wood-Hu Kitchens (located at 343 Manley Street, West Bridgewater), successfully protested the award to the Department of Labor and Industries.

In the course of this award and protest, Masiello came to pay particular attention to the cabinet door specifications, and the construction of the cabinet door became an important issue during the protest proceedings. A note in Frank Driscoll's handwriting on a copy of Driscoll Weber specifications, which was obtained from Masiello & Associates' files, reads: "Bill, Spec this door. You may have your choice of any, but very few mfg's make this door."²⁸ The inability of the competitor, Wood-Hu, to meet the door specifications was the major reason given by Driscoll (through his attorney) in support of the award to Driscoll Weber:

* The specifications for the project, in substance, called for a kitchen cabinet with a warp-resistant particle board core door and a door front which was groove-panelled or had molded edges.

At a hearing today before you Mr. Ralph Grillone of Wood-Hu stated that Wood-Hu was not going to provide a door meeting specifications to the Taunton Housing Authority but was supplying Wood-Hu's "standard" door. It is my understanding that the standard door referred to is a lumber core door which does not meet AWI standards and is inferior in quality to the type of door described in the specifications."²⁹

John Carr Associates The Leominster 667-3 and 667-4 elderly housing projects, designed by John Carr Associates, also specified Driscoll Weber cabinets. The kitchen cabinet specifications for the Leominster 667-3 project are identical to the specifications for "Empire" cabinets manufactured by Yorktowne Kitchens for Driscoll Weber. Although the word "Empire" is not explicitly stated in the 667-3 specifications,³⁰ a closer examination reveals sentence structure and grammatical usage which is exactly the same as Yorktowne's specifications, even with a detailed description of how base cabinet ends are to be "electronically glued to a 3/4" frame."

Driscoll Weber and Spalt Associates were the only two kitchen cabinet suppliers to bid the Leominster 667-3 project. The architect recommended that the contract be awarded to Driscoll Weber, although it was not the low bidder, "inasmuch as the Spalt cabinets fall short of meeting specifications and inasmuch as Spalt Associates has not answered the request for verifying fully assembled delivery."³¹ The Leominster Housing Authority awarded the contract to Driscoll Weber; the cabinet it selected was the "Empire" style.³² Again, Driscoll Weber was awarded a contract when their specifications were used, and another supplier was disqualified because its cabinet did not meet Driscoll Weber specifications.

Reinhardt Associates, Inc.: The architectural firm of Reinhardt Associates, Inc. designed more housing for the elderly projects than any other architectural firm. - Special Commission staff prepared a survey of all 667 projects, designer-distribution of work for the period 1968-1979. Reinhardt Assoc., Inc. was awarded and designed 36 of the 107 contracts available. Driscoll Weber supplied the kitchen cabinets to fourteen (14) of their projects:

Auburn	667-1	Oxford	667-1
Brimfield	667-1	Spencer	667-2
Granby	667-1	Templeton	667-1
Ludlow	667-2	Wayland	667-1
Lynnfield	667-1	Webster	667-1
Mansfield	667-2	West Springfield	667-3
Northampton	667-2	Winchendon	667-1

Unlike the Robert Charles Associates specifications, Reinhardt Associates, Inc., specifications do not mention the manufacturer's name or cabinet style that the specifications are based upon. But a close look at the Brimfield,³³ Mansfield,³⁴ and Templeton³⁵ specifications reveals that the "Empire" cabinet supplied by Driscoll Weber was in fact being specified. Entire sections of "Empire" specifications are reproduced with only a slight change in sentence structure, and with the substance remaining essentially intact.

Finally, when kitchen cabinet specifications for projects designed by Robert Charles Associates, Masiello & Associates, John Carr Associates, and Reinhardt Associates, Inc. are compared -- not to Driscoll Weber specifications but to each others -- the only identifiable differences are the order in which descriptions are given, and the size of the print.³⁶

The use of Driscoll Weber specifications by these and other architectural firms raises serious questions. Why did so many firms use Driscoll Weber specifications? Some probable answers lie in Driscoll Weber's patterns of cash generation, as the following pages suggest.

INFLUENCING THE SYSTEM

Cash generation

Frank Driscoll made payments to government and design firm employees, and made political contributions with money obtained from Driscoll Weber. This money was made available to Frank Driscoll through cash generation, i.e. by Frank Driscoll's cashing personal checks, or cashing checks issued by Driscoll Weber for apparently legitimate business or personal expenses. (In the case of personal checks which were used to obtain cash, Frank Driscoll frequently would "reimburse" himself for such expenditures with business funds.) The following methods were used to generate cash:

1. Checks, charged on the books as commissions, were issued by Driscoll Weber, payable to Frank Driscoll or to Lawrence Vickery, and were cashed (by Driscoll, Vickery or the secretary bookkeeper, Charlotte Roth). The proceeds of such checks were returned to Frank Driscoll.³⁷

2. A Driscoll Weber check would be made payable to a third person, designated by the ultimate real recipient of the check; the third person would then cash the check and hand some or all of its proceeds to the real recipient(s). These payments are discussed in detail below.

3. Driscoll Weber would issue a check to a third party; the third party's endorsement would be forged, and the check cashed.

The Commission's ability to determine the specific disposition of all the proceeds from cash generation was limited by Frank Driscoll's recollection and by contemporary notations on documents provided by Frank Driscoll and by Driscoll Weber. Much more cash was generated than is specifically accounted for in this summary.

The amount charged to the "commission" expense account parallels the firm's growth of revenue from DCA projects over the years.³⁸ Prior to fiscal 1972 the commission expense was always zero. In fiscal 1973, commission expense was \$64,368³⁹ and gross sales from the sale of kitchen cabinets to LHA's was \$521,629.⁴⁰ In fiscal 1975 both commission expense and gross sales from DCA projects peaked at \$94,909 and \$1,189,570.⁴¹ By Special Commission staff

calculations the total amount of cash generated from January 1, 1973 through July 31, 1975, through Frank Driscoll personal checks exceeding \$100 which were cashed, and checks issued to Frank Driscoll and Larry Vickery, charged to commission expense that were cashed was \$96,408.19.⁴²

When an employee is used to generate cash, the employee becomes liable for the tax due on the income that is charged to him on the books, even though the cash may not end up with that individual. Consequently, the employer will pay the added tax due on that portion of an employee's income that is not bona-fide earnings. This was the pattern with Driscoll Weber.

An analysis of Frank Driscoll's personal income tax data for calendar 1973, 1974 and 1975 illustrates the dramatic increase in his personal income during the time cash was being generated. In calendar 1973, Frank Driscoll's gross personal income was \$17,124⁴³ and in calendar 1974 his gross personal income increased almost \$100,000 to \$117,030.⁴⁴ Commission income in 1974 was \$107,627.⁴⁵ Frank Driscoll's tax liability for calendar 1974 was \$43,007.⁴⁶ To meet this financial obligation, Frank Driscoll issued a corporate check from a Driscoll Weber bank account to himself for \$25,000.⁴⁷ The balance of this tax liability was met from payroll deductions and an additional loan of \$9,500⁴⁸ from another Driscoll Weber bank account. These checks for the payment of income taxes were issued on or about the time estimated tax payments were due.

Lawrence Vickery's tax situation was similar. In calendar 1973, his gross salary and commission income was \$9,155.⁴⁹ He received a check dated April 15, 1974 drawn upon Frank Driscoll's personal account in the amount of \$2,600.⁵⁰ Vickery's gross salary and commission income increased to \$50,314⁵¹ in calendar year 1974. On April 16, 1975, Larry Vickery received a check for \$12,608⁵² drawn upon a Driscoll Weber Associates bank account. On April 14, 1976, Frank Driscoll received a commission check for \$4,429⁵³ which is second endorsed by Larry Vickery, and deposited in Vickery's personal bank account at the Guaranty Bank and Trust Co. On the same day, Vickery issued a check to the Internal Revenue Service for \$4,447.⁵⁴

Vickery testified at a private hearing of the Commission, held on November 8, 1980, that he received the proceeds from each of these three checks to cover additional income tax liabilities which he incurred because of Driscoll Weber checks that were cashed and the proceeds returned to Frank Driscoll. Vickery's personal returns were prepared by Meyers Brothers, Handelsman, Menzel and Adeletti, the same accounting firm that prepared the Driscoll Weber returns.⁵⁵

Vickery also described an instance in which he, at Frank Driscoll's direction, forged the signature of a contractor as a check endorsement. Driscoll

Weber issued a check dated December 4, 1974, payable to Donald Byors, in the amount of \$1,317.18.⁵⁶ Vickery forged Byor's endorsement, cashed the check, and returned the proceeds to Frank Driscoll.⁵⁷

In addition to the techniques described for generating cash and making payments, Driscoll Weber conducted its financial affairs in a way which made it difficult for anyone to follow the flow of corporate funds. For example, three different bank accounts were opened under three different company names.* This created an unauditable situation and required that the accountants reconcile this financial data into one reporting entity. Driscoll Weber also failed to maintain its own general ledgers after July 1973. The accountants for the firm had to reconstruct the expense and income information from deposit tickets and the checkbook register, code the transactions and produce a computerized general ledger. The difficulties this situation created are illustrated by Driscoll Weber's financial data in fiscal 1974: bank account information from one account (in the name of Driscoll Vickery) was excluded from Driscoll Weber's fiscal 1974 tax return, necessitating the filing of an amended income tax return⁵⁸ in 1975 after this omission was discovered.

Payments to Design Firms

William Masiello: Frank Driscoll testified on November 8, 1980, at a private hearing before the Special Commission, that William Masiello told him that, if Driscoll Weber cabinets were to be used on jobs that his firm designed, Driscoll would have to make payments to him.⁵⁹ William Masiello had described the same understanding (at a May 14, 1980 public hearing of the Commission) as a kickback arrangement whereby Frank Driscoll wrote the kitchen cabinet specifications for Masiello & Associates projects in exchange for "cash for himself [Masiello], cash for political contributions, and free goods and services."⁶⁰ Driscoll testified that he paid Masiello approximately \$20,000 in the form of cash payments, political contributions, and laundered checks -- that is, checks made payable to a third person so as to conceal the true recipient.

These payments occurred over a period of five years, and were made only after Driscoll Weber received monies from Masiello-related jobs. For example, on November 5, 1973, Driscoll Weber received \$22,339.10 from Granger Construction Co. in partial payment for supplying kitchen cabinets to the Belmont Street Housing for the elderly project.⁶² The following day, November 6, Frank Driscoll and Larry Vickery each received a Driscoll Weber check for \$500;⁶³ a

*Driscoll Vickery Associates Account # 12-272-671, opened 12/11/73.
 Driscoll Weber d/b/a/ DWV Associates Account # 12-234-427, opened April 1975.
 Frank M. Driscoll Associates Account #12-272-000, opened August 1973.

Driscoll Weber file document (in this case a document found in Frank Driscoll's personal papers) referring to both of these checks contains the notation, "Masiello Democrat" in Charlotte Roth's handwriting.⁶⁴ On November 16, 1973, Driscoll and Vickery each again received a Driscoll Weber check for \$500.⁶⁵ Another Driscoll Weber file document reflecting these payments bears the entry "Sen. James Kelly Ways and Means" in Charlotte Roth's handwriting.⁶⁶ Senator James Kelly was chairman of the Massachusetts Senate Ways and Means Committee, which controlled capital outlay expenditures for the entire 667 housing program.

Frank Driscoll testified that both document entries were made by Charlotte Roth at his direction. The \$2,000 in cash generated by cashing the aforementioned four checks was given by Driscoll to William Masiello; the entries made in the Driscoll Weber files reflect information learned by Driscoll from Masiello. In that one month, November, 1973, Driscoll also transmitted to Masiello at his request a personal check, dated 11/18/73, in the amount of \$500 payable to "Reception for James Kelly."⁶⁷ In interviews by Special Commission staff on May 28, 1980, Driscoll also identified a \$200 personal check, dated 10/30/74, which was payable to a candidate for public office, and which he transmitted to William Masiello.

In late 1975, Frank Driscoll began to use different methods for generating cash. It was at this time that Masiello asked Driscoll to launder money that was to be paid to him through a third party. Driscoll did launder money to Masiello through a third party, but (in keeping with his own practice) only after Driscoll Weber received monies from Masiello-related contracts. On August 8, 1975, Driscoll Weber received \$3729.70⁶⁸ from the Shrewsbury Housing Authority for partial payment of kitchen cabinets. Five days later, on August 13, 1975, Driscoll Weber issued a check to Alden Lombard for \$2,135.⁶⁹ The supporting check voucher is notated "Shrewsbury commission."⁷⁰ This disbursement was charged on Driscoll Weber's corporate books to commission expense.

Driscoll testified that he never met Alden Lombard, and that Lombard never did any work for Driscoll Weber. Driscoll made the check payable to Lombard at Masiello's direction, and mailed the check to Masiello. Driscoll admitted that this check to Lombard was a payment to Masiello in connection with the Shrewsbury Housing Authority project.⁷¹

Alden Lombard, a personal acquaintance of William Masiello, testified at a private hearing before the Commission (March 3, 1980) that Masiello asked him to cash a check for him and return the cash to him. Alden Lombard's Westborough Savings Bank account activity reveals that on August 15, 1975 a deposit of \$2,135 was made.⁷² Lombard testified this deposit was attributable to the Driscoll Weber check issued to him for \$2,135; and that the withdrawal of \$1,495 on

August 20, 1975, represented the cash he transmitted to Masiello; the difference he retained for income tax purposes.⁷³

Lumbard was again used to launder money from Driscoll to Masiello. On October 6, 1975 Driscoll Weber issued a check to Alden Lumbard for \$1010.35⁷⁴ Notated on the check voucher was "Sales commission Leicester."⁷⁵ Frank Driscoll testified that Alden Lumbard did not perform any services for Driscoll Weber, and that the sole reason for issuing the check to him was to pay Masiello indirectly for the Leicester contract. The commission entry on the Driscoll Weber check voucher was a deliberate attempt to disguise the purpose of the payment.⁷⁶

Driscoll also issued two checks payable to Donald P. Feldman, William Masiello's attorney, at Masiello's request. The first, a Driscoll Weber check dated September 8, 1976, in the amount of \$901.34,⁷⁷ has a corresponding check voucher bearing the notation: "Commission Leicester."⁷⁸ The second check is a personal check dated March 24, 1977, in the amount of \$500, with the word "Retainage" appearing on the face of the check.⁷⁹ Driscoll testified that Feldman never performed any services for Driscoll or Driscoll Weber, although William Masiello told Driscoll that Feldman might be able to help on a collection matter.⁷⁸

The first check to Feldman was deposited in Feldman's client account at the Guaranty Bank & Trust Company; the second check was endorsed by Feldman. In an interview by Special Commission staff on June 20, 1980, Feldman admitted receiving and depositing the first check. Feldman stated that he did not perform any services for Driscoll Weber, but billed Driscoll Weber for services at Masiello's direction because Masiello had told him that Driscoll Weber owed Masiello money. Feldman said he had no recollection of the circumstances surrounding his receipt of the second check, or of what was done with the proceeds from that check. In a January 24, 1980 interview by Special Commission staff, William V. Masiello said that Feldman gave him a portion of the proceeds from each of these checks.

Frank Driscoll testified that his most recent payment to Masiello occurred within the last few years. Masiello told Driscoll that an additional \$2,000 was needed to satisfy all Driscoll Weber's "previous obligations" to Masiello. When Driscoll was about to pay the \$2,000 to Masiello, Masiello asked Driscoll if he would instead give the money to a Luigi ("Louis") DiNapoli, who, Masiello told Driscoll, had earlier lent him some money. At Masiello's suggestion Driscoll then telephoned DiNapoli, told DiNapoli that he had some money which Masiello had advised him to give to DiNapoli, and a meeting was arranged. Driscoll,

according to his testimony, handed DiNapoli \$2,000 in cash at the Parker House in Boston. The money was in an envelope which was wrapped inside a newspaper.⁸¹

Hugh Quigley of Robert Charles Associates: Frank Driscoll testified Hugh Quigley, an employee of the architectural firm of Robert Charles Associates, received approximately \$10,000 from Driscoll Weber.⁸² Quigley was the field man on the job site for Robert Charles Associates. His position in the field was to approve all phases of the construction including materials; among the materials he approved were kitchen cabinets.⁸³ Therefore, Quigley could make Driscoll Weber's job easier or more difficult pending approval of the kitchen cabinets when they were delivered to the project site.⁸⁴ The Robert Charles firm also frequently used Driscoll Weber kitchen cabinet specifications. (Hugh Quigley, despite several attempts by the Special Commission to question him or to have him appear before it, has declined to come before the Special Commission.)

Frank Driscoll paid cash to Quigley on several different occasions, after Quigley had requested that he do so. Driscoll recalled one payment, in which a Driscoll Weber check was issued to Frank Driscoll for \$2,500⁸⁵ on July 8, 1974, and notated on the voucher was "H. Quigley."⁸⁶ This check was cashed by Frank Driscoll,⁸⁷ and charged on the corporate books as commission expense. Frank Driscoll testified that within a matter of days he gave this cash to Hugh Quigley. Driscoll stated that he paid Quigley after Driscoll Weber received monies from Robert Charles project contracts.⁸⁸ (In late June and early July 1974, Driscoll Weber received \$69,252 from related Robert Charles contracts.)⁸⁹

David Murphy: David Murphy worked on the Agawam Housing for the Elderly 667-1 project for Thurston Munson Associates, a design firm which was then in the midst of a bankruptcy proceeding. (Murphy is now located in Wyoming. Special Commission staff has contacted Murphy by telephone and has attempted to schedule meetings with him. Murphy has refused to meet with Special Commission staff.) Murphy's work on behalf of the designer included preparing kitchen cabinet specifications. The specifications he used were those for the Driscoll Weber "Empire" cabinets.⁹⁰ Murphy also helped Driscoll Weber in its efforts to get paid by the general contractor for cabinets supplied.⁹¹

Frank Driscoll testified that Murphy asked him for \$3,500. Driscoll testified that he was grateful to Murphy for what he had done for Driscoll Weber on the Agawam Housing Authority project, and that he considered Murphy to be a friend. Therefore, he gave Murphy a Driscoll Weber check for \$3,378.14 payable to Murphy Associates.⁹²

To disguise the true reason for the payment, Driscoll gave the check in an odd amount, so that it would appear to be a genuine commission.⁹³ The check was in fact charged as a "5% sales commission" on the books of Driscoll

Weber.⁹⁴ Driscoll Weber had originally issued a check payable to David Murphy personally, but at David Murphy's request voided that check and issued a new one in the same amount payable to Murphy Associates.⁹⁵

Reinhardt Associates: As was discussed previously, Reinhardt Associates, Robert Charles Associates and Masiello Associates, specified cabinets supplied by Driscoll Weber. Driscoll Weber's gross receipts attributed to projects designed by the architectural firm of Reinhardt Associates total \$545,562.56⁹⁶ This is the most Driscoll Weber received from contracts associated with any one architectural firm. It is slightly less than the combined total of gross receipts of \$603,729.47⁹⁷ received from contracts with Masiello & Associates and Robert Charles Associates. Payments to employees of these two firms have been summarized above.

Frank Driscoll stated in interviews by the staff of the Special Commission, on May 13, 1980 and on August 22, 1980, that he did not make payments to any employee of the Reinhardt firm. However, he did discuss certain benefits which Douglas Goodman, a member of the firm of Reinhardt Associates, did receive from Driscoll Weber. Driscoll claimed that these benefits were not a result of their business association but a product of their personal friendship. For example, Frank Driscoll stated that sometime in June of 1974, Goodman discussed with him his inability to raise money for a \$500 contribution to the Sargent Reception Committee. Driscoll purchased a bank money order payable to the Sargent Reception Committee for \$500 from the Third National Bank of Hampden County, and signed Goodman's name.⁹⁸ Driscoll stated that he informed Goodman of his actions. Driscoll also described how Driscoll Weber supplied the Reinhardt offices in the Tower Building in Springfield with a new kitchen at an estimated value of from \$700 to \$1,000.

Contributions to Employees of the Department of Community Affairs

Driscoll Weber's virtual monopoly of kitchen cabinet contracts was certainly due in part to architects specifying cabinets supplied by Driscoll Weber. However, the DCA's approval of Driscoll Weber as the cabinet supplier was still required, as well as its approval of the cabinets actually delivered to the job site for installation. Therefore, the fact that Driscoll both made political contributions at the request of DCA employees and gave money directly to DCA employees was a logical extension of the pattern of payments to members of architectural firms that has been described in the preceding pages.

Michael Harrington: One of the DCA employees paid by Driscoll was Michael Harrington, a senior construction adviser for the DCA. As construction adviser, Harrington approved change orders with respect to allowance items, such as

kitchen cabinets.⁹⁹ Harrington also worked in the field, at the building sites, as the DCA representative at the project. Michael Harrington was summoned and did appear at a private hearing of the Special Commission on October 3, 1980, at which time he declined to answer all questions put to him, invoking his fifth amendment privilege.

Harrington approved Driscoll Weber as the kitchen cabinet supplier for the following projects: Acushnet 667-1; Avon 667-1; Dighton 667-1; Duxbury 667-1; Fairhaven 667-3; Foxboro 667-2; Hingham 667-1; Mansfield 667-2; Marshfield 667-1; Orleans 667-1; Scituate 667-3; and Sharon 667-1.¹⁰⁰ Driscoll Weber was the low bidder on only four of these projects.

During the time that he was DCA construction adviser on projects for which Driscoll Weber supplied kitchen cabinets, Michael Harrington made several requests to Frank Driscoll for cash.¹⁰¹ Harrington's approach is illustrated by Driscoll Weber employee Vickery's description, during testimony at a November 8, 1980, private hearing of the Special Commission, of a Harrington request for money made after bids were opened for a Stoughton Housing for the Elderly project:

He said well, you're a low bid, I will help you with the bid, and he says -- the exact words -- he said do you get any shekels? I said what are you talking about, and he said do you have fifty and I said no.¹⁰²

During interviews by Commission staff Driscoll characterized Harrington's requests as brazen, and said Harrington was a "nickel and dimer" who was always "hitting him up."¹⁰³

Driscoll testified that he made the payments requested by Harrington when he could, "for reasons of harmony, to stay on Harrington's good side." [As an example of the kind of pressure Harrington could apply, Driscoll testified, he could influence whether fifteen or twenty handles at a job were changed.¹⁰⁴] During interviews, Driscoll estimated his total cash payments to Harrington in 1973-1976 as between \$3000 and \$4000.¹⁰⁵ Driscoll obtained the cash to pay Harrington by issuing checks made payable to himself or to Michael Harrington. The checks were cashed by Driscoll; Driscoll would endorse the checks with Harrington's name or his own; and the cash obtained was turned over to Harrington within a matter of days. During his testimony, Driscoll discussed payments exceeding \$1300 in the aggregate which are corroborated by documentary evidence, as follows.

(1) On October 29, 1973, Driscoll Weber issued a check, number 1033, for \$650 payable to Frank Driscoll. On the face of the check was the notation "Contributions \$400.00 250.000."⁶ The check was cashed. A document from the records produced by Driscoll Weber contains the following notations: "Mike Harrington \$250., pd Oct 1973." On the lower right portion of the document is

the notation "Ck #1033 DWA."¹⁰⁷ In testimony in a private hearing on November 8, 1980 before the Commission, Driscoll testified that the only explanation for these entries is that \$250 of the \$650 cash received from the check went to Mike Harrington.¹⁰⁸

(2) On May 10, 1974, Frank Driscoll issued Driscoll Weber check number 126 to Michael Harrington for \$300.¹⁰⁹ This check was then endorsed by Frank Driscoll (signing Harrington's name) who said in testimony before the Commission that he gave the proceeds of the check to Michael Harrington.¹¹⁰ The check voucher for this check contains the notation "M Harrington Carpenters Convention Donation Tickets."¹¹¹ Driscoll explained this notation by testifying that from time to time Harrington requested payments from Driscoll, and that payments were also made to a carpenters union with which Harrington was associated.¹¹²

On April 26, 1974, just sixteen days before the issuance of the \$300 check to Harrington, Harrington approved, in his role as construction supervisor of the DCA, change order #6 on the Sharon 667-1 elderly housing project.¹¹³ Change order #6 deleted the kitchen cabinet allowance from the general contractor's contract, placing the kitchen cabinet contract under the direct supervision of the Sharon Housing Authority. This change benefited Driscoll Weber because it gave the firm a direct contract with the local housing authority, relieving it of the possibility of delays of payments or assessment of back charges by the general contractor.

(3) Michael Harrington was also the construction advisor on the Scituate housing for the elderly project 667-3. On October 21, 1974, he approved change order #3, deleting the entire kitchen cabinet allowance from the general contractor's contract and transforming it into a direct contract with the housing authority.¹¹⁴ On November 4, 1974, Frank Driscoll issued a Driscoll Weber check payable to Michael Harrington in the amount of \$500.¹¹⁵ Driscoll testified he endorsed the check by signing the name "M.D. Harrington, Jr.,"¹¹⁶ second endorsed it with his own name, and gave the cash to Harrington. The voucher for check number 133 contains the notation, "Expenses week of Nov 4, 1974 Spfld." ¹¹⁷ Driscoll testified that he was sure Harrington asked him for the \$500; otherwise, he (Driscoll) would not have given Harrington the money.¹¹⁸

(4) On or about December 15, 1974 Frank Driscoll cashed a \$750 Driscoll Weber check payable to himself.¹¹⁹ The voucher copy reflects the disposition of the cash obtained by Driscoll, including an entry which reads "Mike H 300.00".¹²⁰ Frank Driscoll testified that this entry refers to Mike Harrington, and that he gave \$300 of the money obtained from this check to Harrington.¹²¹

(5) A Driscoll Weber check number 1074 dated April 16, 1975, in the amount of \$250 was issued payable to Michael D. Harrington, Jr.¹²² The voucher copy of this check contains the entry: "Congradulations [sic] on your forthcoming wedding day."¹¹³ Driscoll testified that Mike Harrington had brought the fact of his son's upcoming wedding to Driscoll's attention. Driscoll said that this "was an obligation for us to come up with a donation," and that Harrington mentioned the fact of son's wedding because he knew Driscoll would then send his son a check.¹²⁴

(6) At Mike Harrington's request, Driscoll paid for a room at the Treadway Inn of Chicopee, in May, 1976.¹²⁵

In addition to payments made to Harrington directly, or made to others at his request, Driscoll Weber also gave business to a firm, Giles Associates, in which Harrington's son-in-law had an interest. Driscoll testified that Mike Harrington told him that Giles Associates was his son-in-law's firm, and that Harrington asked Driscoll Weber to direct some of its business to Giles Associates,¹²⁶ and that Driscoll then hired that firm to prepare renderings of plans.¹²⁷ Driscoll Weber also issued a \$100 check dated December 4, 1974, payable to Giles Associates,¹²⁸ which was not for services rendered but, rather, is recorded on the Driscoll Weber records as "Donation Notre Dame."¹²⁹

Richard Skerry: Another DCA employee who regularly received payments from Driscoll Weber from 1973 through 1976 was Richard Skerry.*¹³⁰ Skerry was employed by the DCA as a construction advisor with respect to mechanical and electrical work.

Special Commission staff research has identified a contract (Canton housing for the elderly 667-2) in which Skerry approved a change order affecting a kitchen cabinet contract awarded to Driscoll Weber.¹³¹

Driscoll Weber made payments to Richard Skerry and to his son. The payments of record to Skerry or his family total \$9,769.59. The payments made to Skerry or his wife are as follows:

(1) By personal checks dated February 8, 1973, payable to Richard Skerry, Driscoll transferred \$300 to Skerry.¹³² The word "Tickets" appears on the face of the checks, and Driscoll testified that, at Skerry's request, he paid the \$300 for tickets, probably for some type of function on behalf of Monsignor Kerr.¹³³ The checks, nonetheless, were cashed by Skerry.

*Skerry appeared before the Special Commission at a private hearing pursuant to summons. He refused to answer any questions put to him invoking his fifth amendment privilege against self-incrimination. Skerry is now retired on a disability pension due to an accident in October, 1976, when Skerry tripped and hit his head while inspecting a leaching field and man hole at Norfolk Housing Authority project. This accident was witnessed by Michael Harrington. See appendix exhibit #79.

(2) Two checks dated December 10, 1973, each in the amount of \$500, were issued by Driscoll: one payable to Richard Skerry and the other payable to Mrs. Richard Skerry.¹³⁴ Driscoll testified these checks were Christmas presents.¹³⁵

(3) Driscoll gave Skerry a \$500 check, dated October 1, 1974, drawn from a personal account at the Third National Bank of Hampden County.¹³⁶ This check, Driscoll testified, was also a gift.¹³⁷

(4) A Driscoll personal check dated Dec . 7, 1975, payable to "Richard Skerry" in the amount of \$250, was also transmitted to Skerry.¹³⁸ Driscoll testified that this check was a Christmas present.¹³⁹

(5) Driscoll issued a personal check, dated April 20, 1976, in the amount of \$200 bearing the notation "Masses" on the face of the check. The check is payable to Skerry and is endorsed by Skerry.¹⁴⁰ Driscoll testified that this check was for masses to be said by Monsignor George Kerr, who at that time was State House Chaplain and Pastor at Saint Francis de Sales in Roxbury, Mass.¹⁴¹

Driscoll also issued personal and Driscoll Weber checks payable to Richard Skerry, Jr. The Driscoll Weber checks were charged as commissions. Frank Driscoll testified that Richard Skerry, Jr. was attending college at the time when these checks were issued, and that he performed limited services for the money, namely keeping Driscoll "advised of any projects that he knew about, anything that was happening, anything he heard about."¹⁴² Skerry, however, never produced any sales or prospects for Driscoll Weber; information about potential contracts in any event was published and available to the public in the Dodge Reports. Some of the checks payable to Skerry, Jr. were handed to Skerry, Sr., others were mailed to Skerry, Jr.¹⁴³ Driscoll testified that these sales commissions checks, listed below, were not really commissions but, rather, were contributions towards college expenses:¹⁴⁴

(1) Driscoll Weber check #898, dated July 26, 1973, payable to Richard Skerry, Jr. in the amount of \$200;¹⁴⁵

(2) Driscoll Weber check #150 dated October 20, 1974, payable to Richard Skerry, Jr. in the amount of \$497.10;¹⁴⁶

(3) Driscoll Weber check voucher #163, dated June 12, 1974, payable to Richard Skerry, Jr. in the amount of \$250;¹⁴⁷

(4) Driscoll Weber check #400 dated June 28, 1974, payable to Richard Skerry, Jr. in the amount of \$974.89;¹⁴⁸

(5) Driscoll Weber check #825, dated December 17, 1974, payable to Richard Skerry, Jr. in the amount of \$1974.80.¹⁴⁹

All the "college" contributions listed above were paid to Skerry Jr. by means of Driscoll Weber corporate checks. By contrast, the first check shown in Frank

Driscoll's own personal financial records as made payable to Skerry Jr. was a personal check for \$2500, dated May 14, 1973, and payable to "Richard Scarey, Jr."¹⁵⁰ Driscoll testified that this check was given to Skerry, Sr., at the request of one Lucien Boileau, the owner of real estate located in Chicopee, Mass., which was sold to the Chicopee Housing Authority in 1973. Driscoll said that Lucien Boileau reimbursed him for this check.¹⁵¹ A deposit ticket supplied pursuant to summons by the Third National Bank of Hampden County reflects a \$2,500 deposit in Driscoll's personal account in May, 1973.

The timing of this \$2500 payment is significant. It occurred after a December 26, 1972, DCA letter to the Chicopee Housing Authority refusing to approve the acquisition of Boileau's property by the Chicopee Housing Authority, and before a July 3, 1973, letter authorizing the Chicopee Housing Authority to negotiate the purchase of Boileau's property.¹⁵² On August 15, 1973, the DCA authorized the Chicopee Housing Authority to acquire title to Boileau's property; the Chicopee Authority purchased this property for \$690,000. One month later, Frank Driscoll received a check for \$19,800 from Lucien Boileau. The face of the check contains the words "finder's fee."* Lucien Boileau testified in 1975 at a trial in the United States District Court for the District of Massachusetts that he gave \$2500 to Frank Driscoll to pay a DCA official involved in the review of the purchase proposal, and that he paid Frank Driscoll a finder's fee for his help in arranging the sale.¹⁵³ Skerry was the DCA inspector assigned to determine whether Boileau's property met DCA elderly housing standards.¹⁵⁴

Driscoll stated in an interview with Special Commission staff on May 29, 1980, that he had known Skerry for twenty years, from the time when Skerry was in the heating business before working for DCA. Driscoll also said that Skerry had been helpful to him in giving him advice after his partner Weber died, and that he grew much closer to Skerry from 1973 on. Driscoll stated that it was this relationship, and his gratitude to Skerry for his advice, which caused him to make payments to Skerry.¹⁵⁵ Despite this, Skerry did, on at least one occasion, act as construction advisor on a project for which Driscoll Weber supplied cabinets.¹⁵⁶ Driscoll said that he would be surprised to know that Skerry was directly involved in any matter involving kitchen cabinet contracts.¹⁵⁷

In evaluating the credibility of Driscoll's explanation for these payments to Skerry and his family additional factors should be considered.

*Transcript of testimony of Lucien Boileau dated October 10, 1975, in Case No. Cr. #75-108-F (D. Mass). This was a criminal action against Alexander Stefanik, who was indicted and convicted for violating the Hobbs Act by extorting \$50,000 from Lucien Boileau in connection with the purchase of his property by the Chicopee Housing Authority.

First, Special Commission staff has reviewed Driscoll Weber financial records from 1968 through 1978. This review found only one \$50 payment to Skerry prior to 1973, the year in which the volume of Driscoll Weber's DCA kitchen cabinet contracts grew substantially. Nor were there any payments made to Skerry after he retired from the DCA in 1976.

Second, the circumstances surrounding Frank Driscoll's payment of \$2500 to Skerry in 1973 on behalf of Lucien Boileau suggest that friendship was not the only explanation of payments made by Driscoll to Skerry.¹⁵⁸

Third, Skerry, as construction advisor on a Watertown Housing Authority boiler modernization contract, in July, 1976, reviewed and approved the work performed. Two outside engineering firms subsequently reported (in August and September, 1976, one month before the accident which was the basis for Skerry's disability retirement) that the Watertown Housing Authority boiler modernization work had not been done as required by the plans and specifications, and that an estimated additional \$60,000 to \$100,000 would be needed to complete the work specified.* This incident provides additional support for the thesis that Skerry's judgment was subject to influence by parties willing to make payment in return for Skerry's backing on DCA-supervised projects.

Frank Driscoll stated in interviews that he also gave money to certain LHA members and LHA employees. A chief maintenance man for an LHA received a total of \$1097.80 from Driscoll Weber, Inc. and its related entities. This money was paid in installments of over a period of years, from 1973 to 1975. These checks were charged to the commission expense account on Driscoll Weber's books. Driscoll said he paid this individual, who is now deceased, because he told Driscoll he could help him receive kitchen cabinet contracts. Frank Driscoll stated in an interview with Special Commission staff on June 12, 1980, that he never received anything from this individual.

A chairman of an LHA, who is now deceased, received a check from Driscoll Weber for \$2001. This check was charged on Driscoll Weber's books to commission expense. Driscoll Weber was awarded the cabinet supply contract at the elderly housing project being constructed by the local housing authority of which the recipient of this check was chairman. This payment to the LHA chairman occurred after Driscoll Weber received payment in full for supplying the kitchen cabinets. The amount of this check represents roughly 10 percent of the amount of the contract awarded Driscoll Weber.

*The chairman of the Watertown Housing Authority (Paul Trombino), the architect (Robert D. Goodoak), and the general contractor, (William Bumstead) were indicted and convicted of charges arising out of matters relating to this Watertown Housing Authority contract.

Political Contributions

Frank Driscoll not only made payments to architectural firms but also made generous contributions to various political campaigns. Frank Driscoll explained during interviews by Commission staff that he contributed regularly and generously to various political campaigns to accumulate "generalized goodwill," and not for specific contract awards.

These contributions were sometimes illegal in that they violated the campaign finance laws then in effect concerning individual contribution limits, or because they were cash contributions. This section will not detail all Driscoll's contributions but rather focus on those that were made in violation of campaign finance laws.

Contributions Through Manzi: Frank Driscoll stated in interviews that he attended the three fundraisers for Governor Sargent held at the Pleasant Valley Country Club (PVCC) in Sutton, Massachusetts during the period 1969 through 1974. He stated that he paid \$1000 per affair in cash to Albert "Toots" Manzi for ten tickets at \$100 apiece. Driscoll said that it was his practice to make these contributions to Manzi either at the Arthur J. Manzi Insurance Co. offices, or at a Howard Johnson's on the Massachusetts Turnpike near Route 128.¹⁵⁹ Among these contributions is a \$1000 cash contribution which Driscoll said he gave to Manzi in April, 1972, to purchase tickets for the Sargent Reelection Committee dinner held at PVCC on May 10, 1972.¹⁶⁰ Driscoll obtained the money for the contribution by cashing a Driscoll Weber check.¹⁶¹ This cash was not however deposited in the Guaranty Bank and Trust Company account maintained by the Sargent Reception Committee (as required) for the deposit of contributions to that event.*

Frank Driscoll stated that in July, 1974, he contributed \$3500 to the Sargent Reception Committee as a result of Manzi's solicitations. It was made to appear that seven different people contributed; but in fact the money for these seven contributions of \$500 each originated with Frank Driscoll. On July 2, 1974, Frank Driscoll purchased five bank money orders from the Third National Bank of Hampden County payable to the Sargent Reception Committee for \$500 each.¹⁶² He stated that he directed two of his employees, Larry Vickery and Edward Beaulieu, to sign and address one of these bank money orders, and that he signed and addressed the remaining three with the names of his daughter, Catherine Vachula; his friend, Douglas Goodman of Reinhardt Associates, Inc. and Richard Calderigi, the son of a former Driscoll Weber employee.¹⁶³

On July 8, 1974, Mrs. Frank M. Driscoll issued a personal check in the amount of \$500 payable to Governor Sargent's Dinner Committee.¹⁶⁴ Two days later, on July 10, 1974, Frank Driscoll issued a personal check payable to the Sargent Reception Committee in the amount of \$500.¹⁶⁵ The fact that one person received the seven contributions is corroborated by an examination of the records of the Director of Campaign and Political Finance. The five bank money orders dated July 2, 1974, and the two personal checks of Mr. and Mrs. Frank M. Driscoll dated July 8, 1974 and July 10, 1974, are all recorded as being deposited at the Guaranty Bank and Trust Co., in Worcester, Mass., on July 22, 1974.¹⁶⁶ Driscoll said that he handed all these contributions to Manzi.

On September 22, 1974, the third and final fundraiser for Governor Sargent was held at the PVCC. Driscoll stated that he again purchased ten tickets from Manzi for \$1000 cash for this affair. Driscoll said he made the contributions in cash because he was told that checks were not wanted.¹⁶⁷ This contribution brought Driscoll's total 1974 Sargent contribution to \$4500, well over the individual limit of \$3000 established by law.

Driscoll, when asked if he ever received anything in return for his contributions to Manzi, responded that Manzi helped him on one occasion in the late summer or early fall of 1971. Driscoll said that Manzi told him he had called James Cusack,* who at that time was the project director for the Bureau of Building Construction at the UMass Boston construction site, and asked Cusack to speak with Driscoll about Driscoll Weber possibly bidding some work at that project. Driscoll said that he did meet with Cusack and reviewed the plans and specifications. However, there were no kitchen cabinets specified at that time for the project. Driscoll said that Cusack told him to stop by at a future date. Driscoll said he did, and again found there was nothing that Driscoll Weber could bid.¹⁶⁸

Sylvester Sylvia: Sylvester Sylvia is currently employed by the DCA as Director of Housing Assistance, a position he has held since late 1969. He was originally appointed to the position of Director of the Bureau of Housing on January 8, 1965. He was appointed to the Municipal Liaison office of the DCA in June 1975. In an interview by Special Commission staff on November 10, 1980, Sylvia stated that his duties included helping cities and towns set up housing authorities, and supervising the process of planning a project through the day the construction contract was bid. Sylvia ran unsuccessfully for Mayor of New Bedford in 1973, 1975 and 1977.¹⁶⁹

*James J. Cusack testified at trial Commonwealth v. Masiello, Manzi, Superior Court for Criminal Business Nos. 019122, -3, -4, 018334 and Nos. 019125, -6, -7, 018334, on February 28, 1979 Volume XI at 43 - 44, 46.

Sylvia said in a November 10, 1980, interview with Commission staff that he had come to know Frank Driscoll through Driscoll's frequent visits to DCA to pick up or review plans and specifications. He said that he had met with Driscoll socially possibly a half dozen times and that he had successfully solicited Driscoll for \$50 and \$200 contributions to various charities. Sylvia said that he had no responsibilities with DCA affecting kitchen cabinet contract awards.¹⁷⁰

Driscoll Weber's financial records include cancelled checks numbered 1205 and 1206 dated June 11, 1975, each payable to "Cash" in the amount of \$200. Check vouchers for the checks contain the entries "Political Campaign Sylvester Sylvia."¹⁷¹

In an interview with Commission staff Sylvia admitted receiving \$400 in cash from Richard Skerry in 1975. Sylvia stated that Skerry called him at his DCA office, and set up an appointment to meet with him during the day on Bowdoin Street, in Boston. At their meeting Skerry handed Sylvia \$400 in cash, and told him that \$200 was a contribution from Driscoll. Sylvia said that Skerry did not tell him where the other \$200 came from, and Sylvia did not ask.

Sylvia recalled that Skerry, who worked with him at DCA, knew Sylvia was running for office and told him he would sell tickets (at \$6 per ticket) to Sylvia's clambake fundraiser. Sylvia admitted, however, that the money given him by Skerry was not from ticket sales but was really a cash contribution, and that the contribution had not been reported. Sylvia said he did not know in 1975 that it was illegal to accept cash contribution in excess of \$50. Copies of Sylvia's 1975 and 1977 campaign contribution documents filed with the Office of Campaign and Political Finance show no record of either a \$200 or a \$400 contribution from either Skerry or Frank Driscoll.

CONCLUSION

The information unearthed in its study of Driscoll Weber convinced the members of the Special Commission that the existing system of sub-bidding on contracts under allowance amounts afforded excessive opportunities for bid-rigging among vendors; for kickbacks to architects, public employees, and political fundraisers; and for the type of monopolization of contracts by a single favored supplier that the Driscoll case exemplified.

The 1976 change in DCA procedures that ruled out allowances and established minimum specification guidelines -- which ended Driscoll Weber's brief dominance of the kitchen cabinet field -- was a useful administrative change. But the Special Commission concluded that legislated reforms were mandatory in order to prevent any future reversion to the old practices. Many elements of the legislative proposals made by the Special Commission address the problems evident

in the Driscoll Weber history. Most specifically Chapter 149, Section 44F, para. (4)(a) of the Mass. General Laws, passed by the legislature in August, 1980, addresses the issue of allowances. Other legislation proposed by the Special Commission is discussed in Part IV of this report, above; and in the section on Design in Volume 8 of this report (Systems Issues and Findings.)

TESTING CONSULTANTS

INTRODUCTION

The testing consultant is in many ways the lynchpin in the success of any construction project. Although there are specialties within the field, most firms perform one or more of the following tests: investigation of sub-soil conditions through drilling and boring; stress measurements of concrete and steel structural members; chemical testing of construction materials; investigation of heating, ventilating and air conditioning (HVAC) systems; and land surveying. Yet, despite its importance, the industry is virtually unregulated and particularly susceptible to corruption.

There are few public records kept of which testing firm was paid how much for what services. The system therefore allows for the proliferation of multiple firms owned or controlled by the same individuals. Similarly, any consultant with a poor performance record need only change its name and move onto a new project.

Aside from a lack of regulation, there are also questions about the testing consultants' allegiance. They are required by law (G.L. c.149 sec.44B-L) to bid for work on a competitive basis. The Commission found that what actually happened is that the tester is normally selected preferentially by the architect of a project. As will be discussed at length here in a case study, the same testing firm is likely to be retained by an architect for successive work.

In other words, one of the parties whose work is to be supervised and tested hires the supervisor. There is no arm's-length relationship between tester and architect. The tester has no real responsibility to the owner. There is no assurance to the public that a qualified firm will perform the testing work on a given project, or even that testing will be done at all.

BACKGROUND

Before 1975 the Bureau of Building Construction (BBC) chose all its testing firms from a list maintained within the Bureau. This "grey list" comprised acceptable consulting firms specializing in inspection services. Theoretically, the BBC made its assignments from this list of "certified testers" on a rotational basis, yet the criteria for the BBC's initial inclusion of firms on the list remain a mystery.

Commission interviews with Eugene Malloy, a former BBC chief construction engineer, have suggested, however, that the BBC's "grey list" was actually utilized to increase, rather than eliminate, favoritism among testing firms. Malloy said that the BBC selected only four or five favored firms to do all its

testing.¹ At the same time, consultants were paid by the architect, not the BBC, thus preserving their virtual anonymity.

In 1975 the BBC allowed architects and engineers to select testing consultants themselves. Even so, the BBC does not now, nor has it ever, maintained records or files of testing company ownership. Moreover, few public records are kept of payments and services rendered. Thus, there is little to prevent a single firm or even several firms with the same ownership from reaping the lion's share of the state's testing contracts.

Similarly, there exists no inhibition to one or several consulting firms enjoying a common ownership from hiring one another to supervise each other. In fact, the Commission found documented instances in a Leicester Housing for the Elderly project on which the sole bidders to the architect on the project were three firms owned by the same individual (Appendix exhibit 1). As another example, one architect on a public project hired a supervisory testing consultant who, in turn, hired an affiliated testing firm with an unrelated name. In short, that firm was supervising its own work. The architect was unaware of this relationship until told of it by competitors.²

Commission research has shown that the tester's allegiance, if any, lies solely with the architect. As stated previously, the architect now contracts with the tester directly and no longer must contract with the BBC by Form 4; that document is sent to testers and architects only as a guideline. In essence, the two parties are free to contract using any mutually acceptable document subject to BBC approval. The BBC's only concerns are that the set testing allowances are not exceeded, that the consultants meet the requirements of the latest building code and that they conduct their tests in accordance with approved standards. Yet the BBC enforces none of these, leaving them instead to the architects. Unfortunately, there exist no specific qualification requirements in the State Building Code for testing firms themselves.

A certain amount of politicking apparently plays a role in tester selection. Through interviews with several testing firms, the Commission learned of the following: that an offer was made to withdraw a bid in exchange for money;³ also, that in at least one instance, pressure was applied to an architect by the awarding agency to force the architect to replace a testing consultant already hired with two others favored by an agency executive who was a director of one of the favored consulting firms.⁴ In such cases, only the strenuous complaining of the low bidder keeps the job from being awarded to another.

The selection process aside, some testing consultants feel that the state simply does not budget enough money for preliminary tests. The Commission was told of one case in which only seven tenths of one percent (\$7,000 of \$1 million) of the allocated project funds was earmarked for tests.⁵ Firms interviewed have

implied that since funds are so tight, the incentive is always to do fewer than the required number of tests,⁶ or no tests at all.⁷ Nevertheless, one firm suggested that testing labs will split fees with the architect just to undercut the competition and get the job. Although the labs charge the architects less, the architect will still charge the authorizing agency the full fee.⁸

In the course of interviews, the Commission found that testing consultants are usually hired and paid by those whose work they are to oversee; to perform a service which the client (architect or contractor) often wants left undone; whose own work product is to a great extent intangible to begin with, and which is most likely to be destroyed if the testing is actually carried out.

A CASE STUDY: SUCCESS AT A COST

Appearing before the Special Commission on April 29, 1980, Russell Kenney, the Director of Testing at R.J. Kenney Associates, defined the current process of awarding testing contracts:

It was obvious to me at the time that the work we provided in Massachusetts although we were doing a good job, that if we did not perform or buy tickets to testimonials, or contribute to political campaigns, we might not continue receiving favorable recommendations for testing services and jobs. Nothing was ever said, but it was assumed.⁹

Kenney testified that his company performs soil, concrete and seal inspections on both private and federally funded projects, the latter constituting the majority of its business. R.J. Kenney also carries out inspections and testing of buildings thought to contain structural and other problems.¹⁰ It has worked on approximately 30 state and county projects, among them housing for the elderly and some consultant services on BBC jobs.¹¹

The first state or county building for which R.J. Kenney received a testing contract was the Worcester County Jail, in 1971; the architect on the project was Masiello & Associates. Kenney described for the Commission how his firm was selected by Masiello:

We sent in a bid for testing service on a job under an allowance, and then I asked a friend of mine to introduce me to Bill Masiello (principal of Masiello and Associates).¹²

In June 1971, before any testing company had been selected for the project, Kenney, Masiello, and Kenney's friend, Henry Camosse, met at Masiello's office in Worcester. According to Kenney, Masiello had previously received his testing bid in the mail. He told Kenney at the meeting that the bid was too high, higher than all others he had received.¹³ Kenney testified that at that point:

He (Masiello) put the other bids on a desk, left the room and asked me to reconsider my bid and there was a blank form there... I simply filled in the bid approximately at the same price, at the lowest price.

... I think basically it was a competitive bid, not initially lower in each item but overall as low as the lowest one.¹⁴

R.J. Kenney received the testing contract on the Worcester County Jail, and when asked by the Commission if that particular contract, set at a maximum of \$7000, had been awarded on a competitive bid basis, Kenney replied that it had not.¹⁵

R.J. Kenney's future relationship with Masiello, one which spanned five years and involved almost \$60,000 of testing contracts, pointedly illustrates the symbiotic character of many architect-consultant arrangements. In exchange for testing contracts, Kenney was expected to contribute to political campaigns, provide free consulting services, and even kick back a given percentage of a contract price.

From 1971 to 1975, the majority of public work done by R.J. Kenney in Massachusetts which was normal testing work on a particular job was received primarily on projects on which Masiello & Associates was the design firm.¹⁶ Russell Kenney told the Commission that of the five Masiello projects, other than the Worcester County Jail, which his firm tested, all were housing for the elderly: the Belmont Street high-rise in Worcester, September 1972-May 1973: testing fee allowance, \$20,000; the Shrewsbury high-rise, April 1972-July 1973: \$12,000; Shrewsbury Gardens, May 1974-September 1975: \$11,000; Leicester housing for the elderly, September 1974-May 1975: \$2000; and the Taunton high-rise, October 1975-August 1976: \$15,000.¹⁷

Kenney stated that on all but one project, the Belmont Street high-rise (on which the previous testing lab had failed and the contractor, at Masiello's suggestion, hired R.J. Kenney), he sent his bid proposal either to Masiello or to the respective housing authority. Without exception, Masiello recommended R.J. Kenney as the testing subcontractor.

Masiello's recommendations, however, were not without their costs. Kenney stated before the Commission that Masiello first approached him for a political contribution in mid-1971, directly after Kenney received the Worcester County Jail contract:

He asked us to purchase a ticket for a testimonial for the county commissioners, Worcester County commissioners, for the sum of \$50, which we did. ¹⁹

Although he made the payment by personal check, Kenney said he never received any tickets for the testimonial.

Masiello, in October 1971, again requested a political contribution from Kenney:

He (Masiello) called me and left a message at my office to come and see him. I went to see him and he said he wanted me to buy a ticket to a testimonial for Senator Kelly, and that he had to support these people and he was required or felt that he had to purchase a number of tickets, and to take some of the sting or the expense off his firm that he also requires people that he gives work to, to also buy some tickets and he thought that was only fair.²⁰

Kenney explained to the Commission why Masiello expected him to buy tickets:

He said Senator Kelly was a very good friend of his, was very helpful, was a good person to know and that it would behoove me to buy a ticket.²¹

And so he did. However, on this occasion the ticket cost \$100. Kenney testified that, while in Masiello's office paying for the ticket (by check), he noticed other tickets for the function, some with the number 50 written on the back. (The number 100 was written on the back of his.) Concerning this obvious price difference, he noted that:

Bill Masiello never told me in so many words, but the impression I had was that basically depending on the amount of work you do, dollar wise, is the amount of tickets or the costs of the tickets to you.²²

Thus, Kenney's was not the only firm buying tickets from Masiello. Kenney testified that when he was first asked to buy the tickets he was told by Masiello that:

...various other consultants or suppliers or subcontractors were also buying tickets and probably would attend the function.... He mentioned a nursery outfit that supplied shrubs and a few other things to some of the other projects, a brick supplier, a supplier of kitchen cabinets, a brick supplier, block supplier.... I think the nursery was Shrewsbury Nursery. The cabinet people were Driscoll-Weber. The block supplier was Henry Camosse...²³

Kenney stated that he attended this function.²⁴

A similar circumstance arose in May, 1972. Kenney said that Masiello again asked him to buy two tickets to a testimonial for Worcester County Commissioner Paul X. Tivnan. Kenney made out a \$100 corporate check payable to the Paul X. Tivnan Committee, yet he never received any tickets.²⁵ At that time, corporate political contributions were prohibited by state law, but Kenney testified that he was unaware of this.²⁶

In late 1973 another testimonial came up. According to Kenney, Masiello wanted \$200 in cash this time. Although he could not recall if Masiello told him whom the testimonial was for, Kenney said he never saw any tickets anyway.²⁷ A few days after Masiello's request for the \$200, Kenney said he

...gave it (the \$200 in cash) to him (Masiello) in a white envelope and put it in the bottom drawer of his desk with other envelopes of similar size.

At that point, stated Kenney:

He just told me that work was coming up and there was projects that we would get the testing on and that he mentioned a number of projects basically.²⁸

Kenney related to the Commission a further instance in August 1975 in which he was expected to make a political contribution in return for testing contracts:

He (Masiello) told me there was a testimonial at the Boston 57. It was a senator, but I can't tell you or remember exactly who, and that he needed a contribution for the testimonial, and that I thought he said 400 but the check, it says \$500, and that he would like it in cash. That I should attend this function. Although I couldn't get a ticket, I could ask at the door and he'd bring me in and introduce me to very important people, and

he would do my career and the company's career a lot of good, and I shouldn't miss the meeting.

So, I cashed the check, brought it down, and gave him the money. The same thing happened. He took it out of an envelope, and put it in another envelope, put it in his drawer, reminded me -- then after we went out to Howard Johnson's restaurant (in Shrewsbury) ... and he reminded me that I should attend this function but we (Kenney and his wife) decided not to go.²⁹

About two weeks later, Kenney said, Masiello called him up and was very surprised that Kenney missed the function. However, Masiello did not really spell out why attending it would have helped Kenney's career:

No one, either Bill Masiello or anyone, actually came up and said if you do not contribute you won't get the job, but, we were well enough along to know that it was required if we wanted to keep getting work, yes.³⁰

The last project on which Kenney was associated with Masiello was for the Taunton Housing Authority. Sometime in October or November 1975, Kenney testified, Masiello asked him for more than just a political contribution:

We had just finished the Taunton housing for the elderly. We had performed work in the City of Taunton and had on our own applied for the job of testing services. So, Bill Masiello he asked me what the allowance was for testing on the job which he knew as well as I did was \$15,000. He said well, that should be worth 10 percent, then. This is the first time he did not ask me to buy tickets or anything else, but simply asked me to return him 10 percent of the face of the contract. I was noncommittal at the time. I told him I would think about it.³¹

Kenney testified that he never got back to Masiello and never paid him anything, much less the 10 percent, with respect to the Taunton job. Still, his firm was awarded the testing contract for the project. Kenney described how this occurred:

Well, we felt that number one, I think if he wanted me--he would not expect us to come up with the money. He would wait until we got paid. Number two, we felt we already had the job and there was a difference between buying tickets and kicking back money. We felt we would just go along with the job. If we got relieved from the job, fine. If we didn't, we would get the job. It was our particular type of job. It was a job that was unique, and we were the only experts around in it, and it would be very difficult for them to remove us once we got on that job.³²

When asked by the Commission if his firm received any further work on any jobs for which Masiello & Associates was the designer, Kenney answered that, "The other jobs we were supposed to get we didn't get any. That was the last job. We never (again) received a contract from them."³³

During the course of their business relationship, from 1971 to 1975, Kenney provided Masiello not only money, but free testing services. Kenney cited the Norfolk County Jail as one example. On that project, at Masiello's request, R.J. Kenney investigated a concrete problem on a handball court. Kenney sent Masiello the invoice for the work, but Kenney was never paid for the job. In another case, a swimming pool in Brookline, R.J. Kenney was called in to fix the concrete anchoring of the pool's hydraulic cover mechanism. Kenney testified that he

repaired it and again sent Masiello the bill:

He wanted the bill from us, not to pay it basically, but to show somebody how much money he spent on it. It was obvious when he told me that that he wasn't going to pay us.³⁴

By all indications then, R.J. Kenney's prolonged business association with Masiello was contingent on Kenney's continual provision of both monetary and non-monetary favors. When Kenney ceased to perform those favors, Masiello's awarding of testing contracts to him ended.

Kenney's limited association with the BBC took place in late 1971 on the University of Massachusetts Medical School project in Worcester. At that time, the facility was being constructed in phases. Kenney said that his firm had been hired by the general contractor, Blount-Fontaine, through the recommendation of the designer, Le Messurier Associates, to investigate repairs to the basement level of the science building phase.³⁵ When he applied to be considered for the job:

Well, the job wasn't even in the Dodge report basically. It was still a draft report. It was maybe a year away from the start of construction, but we were told another firm had been chosen for the job (i.e., chosen before the job appeared in public records).³⁶

That same lab was on the job for other phases, and, in Kenney's opinion, had been found to be wanting in its expertise:

We were working in the basement level fixing the columns where our function was to examine them, design a repair, remedial repair method, and supervise remedial repair. I was up where they were placing concrete on the third level. They had some concrete in there with about an 11 inch slump. The truck was overloaded.... He had no blades in his mixture. The (concrete) forms were all dirty, the expander beams. There were coffee cups, pieces of wood, garbage all over the form. I told the inspector. I said, you know, we are down there fixing the basement now. You better check this truck and make him clean out the forms. He simply told me that concrete costs money and he wasn't going to reject the concrete, and I told him, we are going to be back in a few months fixing that. Sure enough, we were back a few months later in the same exact area where he had placed the concrete repairing it.³⁷

Kenney testified that the inspector to whom he complained about the concrete problem was BBC official Eugene Malloy, then chief construction engineer on the UMass Medical School project:

I simply stated that I am out here investigating this project and supervising repairs that should never have been, but because of the lack of testing and experience from the testing lab, and you are telling me that you are not going to consider me and you are going to give these people a job that is not even held in the Dodge report yet? He simply told me that if I wanted to do business in Massachusetts, I better learn not to rock the boat.³⁸

According to Kenney, the other lab that got the testing job was Jersey Testing, of Springfield. He said that the man who represented the firm, Tom Crabtree, left Jersey, and now operates a different firm, Universal Testing Services, Inc.³⁹

CONCLUSION

No one can determine how much public design and construction money is currently being spent on testing and boring services. Undoubtedly, the amount is large. To curtail the kind of waste and abuse described by Russell Kenney requires a vast improvement of the Commonwealth's records on consultants. Better records would enable the state to detect the potential for abuse, kickbacks and favoritism between architects and consultants, interlocking corporate ownership and an excessive share of the public dollar for a few firms.

Until the Commonwealth commits itself to paying testing consultants directly, it should develop the means of identifying and auditing the indirect payments to these firms. There should be a master list of testing firms, indexed by firm and principal. The state Comptroller now maintains a master list of all those receiving money directly from the Commonwealth. Such a list should incorporate all consultants receiving state funds, directly or indirectly, and should cross-reference this data by firm and principal. Such a system would uncover disproportionate payments to single firms and to networks of commonly owned firms.

Concerning the actual selection process, the BBC, or any other state agency for that matter, instead of allowing the architect to select consultants, would do well to follow the model set by the Department of Public Works (DPW). The DPW uses standardized and formalized procedures: it maintains a review board to screen and prequalify consultants and an updated file of firms in engineering and related fields eligible to provide services to the department. The board reviews data submitted on federal and in-house forms. It evaluates the size of the firm and its personnel's qualifications, maintains profiles of project experience and summarizes professional service fees received within the past five years, and past performance.

With a thoroughly updated accounting of which firms are receiving how much money for what specific services, and a selection procedure that examines a firm's relevant qualifications and experience, surely the Commonwealth's public agencies can begin to diminish the likelihood of corruption in the testing consultant industry, as illustrated by the Masiello-Kenney relationship.

INFLUENCE EXERCISED ON ADMINISTRATIVE AND LEGISLATIVE ACTION

A. 1. Overview of Strategies to Influence Legislators and Neutralize Supervision.

In the opening statement of his public appearance before the Special Commission, William Masiello testified:

... I did not have to twist any arms ... I simply operated within the system that was in existence in Massachusetts during that period of time ... As I knew it, there were basically two groups of people who operated within the system. In one group were businessmen such as me who were looking for the "edge" in getting business with the state. The other group was comprised of various levels of public officials who had their hand out for one reason or another...

... I would merely buy a ticket for access to the inside and then I could generally take it from there without the public official even being aware of it, although by that time I had actually neutralized any effective monitoring of the contract through my various contributions and contacts throughout the political system...1

In these initial phrases, he put forward the key to success for a businessman seeking the "edge": buying a ticket for access to the inside.

Masiello's "ticket for access" included not only the fundraising or organizational skills useful to political campaigns. Nor was it solely a matter of picking up restaurant tabs or springing for drinks when public officials were around. Nor was it simply a shower of free gifts and services. Masiello's strategy consisted of knowing the system and procedure of contract awards intimately and then making sure that every key pressure point or decisionmaker along the way was covered in the manner most appropriate to it. In covering each point, Masiello utilized all of the above devices and more.

2. Specific means of buying access.

(a) Political Fundraising

William Masiello learned early from his brother Frank that architects were expected to pay money "up front" if they expected to receive public contracts; he later learned from him how money could be laundered on its way into political tills.² But it was William's use of these methods of access which brought the Masiello firm its greatest prosperity.

William Masiello established an easy mechanism for raising cash from his corporation for political contributions; he simply used the dormant bank account of one of his long-time consultants to launder funds. The large volume of cash thus generated and donated was a prime "door opener" for contracts in Suffolk County, described above in Volume 3.

Cash he generated by himself or through his employees was also used to make what were euphemistically called "political contributions" but were, in effect, bribes. Both of these methods of substantial fundraising were used when an outright bribe to the executive decisionmaker was the necessary quid pro quo.

A more subtle form of fundraising, and one which imposed less of a strain on the accounts of Masiello and Associates, was the sale of tickets to political fundraising events. Because of the considerable discretionary power he exercised in the award of supply contracts (discussed in section on Suppliers above), William Masiello had at his reach a group of businessmen indebted to him for a significant part of their sales. He was thus able to call on them when he was pressed to unload tickets for various events, which was often. Raymond Allard, former president of Masiello and Associates, recounted it this way:

... He was generally fairly active in [political fundraising] ... he on occasion would complain about the quantity of it that was more or less forced on him ... on one occasion he, while complaining to me opened up a bottom drawer of his desk which was a deep drawer, and it had quite a variety and quite a quantity of fundraising tickets to various functions that he was apparently committed for and had to either buy or somehow pass on ...

... He would call ... various suppliers who had in the past either supplied material for projects that Masiello had designed or subcontractors on occasion and relay to them that, you know, he needed x number of dollars as contributions for this or that fund or fundraising event.

... His explanation of philosophy on it was that since he had to pay to get work, state work or public work that he felt that some of the other people who were active in doing the same work and yet did not get involved in the fundraising or soliciting of contributions [should] pay their share, that if he had to pay, then they should also pay, that he felt it wasn't fair to him to shoulder the whole burden.³

This ready network of obligated buyers made Masiello an asset to any official in need of campaign funds, and in turn made the officials obligated to him, if only subtly.

(b) Related Political Activity

William Masiello made himself politically useful in other ways. When Brian Gould, a young man referred by Senator James A. Kelly, came to work for the Masiello firm around 1971, he was taught how to use the offset printing apparatus in the office. Over the next five years, he frequently spent a day or a half day at a time printing campaign flyers, stationery, cards, bumper stickers, fundraising tickets and other political materials. He often delivered these materials to the candidates appearing on them, finally charging his services to the general overhead of the Masiello firm. Among those who enjoyed the free services provided were Worcester County Commissioners Paul Tivnan, Walter Kelly, and Philip Philbin, County Treasurer Edward Bird, Senator James Kelly, Worcester Mayor Thomas Early, and former Senator Vite Pigaga.⁴

Because the printing services were not billed, but charged to overhead, they were in essence charged to all of the firm's clients and projects -- of which, coincidentally, over 90 percent were public agencies and contracts. Thus it was the taxpayers who ultimately footed the bill.

Employees of the Masiello firm were also recruited to get personally involved in political activity; some were asked to campaign,⁵ others to contribute personally.⁶ The result was that the firm not only provided professional services for public agencies, but served as a campaign resource at election time for the people running the agencies.

(c) Professional Fees

When the Masiello firm wanted to help a public employee or official, it sometimes did so in the form of compensation for professional advice or services. The most noteworthy example of this was the series of \$500 monthly payments to Senator James Kelly which are detailed in the next section of this report. Another example was a consulting relationship with Frederick Kussman.

Fred Kussman, as administrative assistant to the director of the BBC, was the number two man at that agency. From that position, he recommended firms for continued services, administered the opening of bids, interpreted regulations, served as secretary to the Designer Selection Board, and approved payments. William Masiello's secretary and the Masiello firm's telephone records confirmed that Masiello and Kussman were in contact on an almost-daily basis.

In 1975 and 1976, Kussman received two checks of \$1,000 each from the Masiello firm, ostensibly for consulting services with regard to the 1975 purchase by the Masiello firm of a mansion on Elm Street, Worcester, for office space, and advice on a non-BBC project (The Charles Street/Deer Island Jail). In a July, 1977 administrative hearing before a designee of the Secretary of Administration and Finance, Kussman was adjudged to have created an appearance of conflict of interest by his receipt of these consultant fees.

Since that administrative hearing, the Special Commission developed and heard additional evidence concerning Kussman's relationship with the Masiello firm. That evidence included testimony by Masiello employees that they frequently called Kussman for advice concerning state bidding laws and contracts which the firm had received from the BBC.⁷

William Masiello testified that, in late 1972, when his firm was negotiating with Daniel, Mann, Johnson and Mendenhall (DMJM) for a consulting contract at Holyoke Community College (a BBC-administered project), he asked Kussman to review the proposed contract on behalf of the Masiello firm and compare it with the contract which DMJM had with the BBC for the same project.⁸ Frank Masiello, who suggested the review, testified that it was an unusual request made

possible by Kussman's friendship with the Masiello brothers.⁹ William Masiello said it was not unusual for Kussman to review something of this nature prior to Masiello entering into a contract.¹⁰

A review of the Masiello files produced a four-page analysis of the contract in what appeared to be Kussman's handwriting, as well as three slightly different typewritten versions of the same documents; in them, Kussman suggested several amendments to the proposed contract, some of which would raise Masiello's fee (which would be paid for by the BBC through DMJM). Kussman met with Frank and William Masiello in Miami to review his recommendations with them.¹¹

According to testimony and documents, it appeared that Kussman was also involved in a scheme originated by the Masiello brothers to delay the signing of DMJM's contract for Phase II of the Holyoke Community College project. This was to allow the Masiellos extra time and leverage to force DMJM to accept the Masiello firm as a consultant on its own terms.¹²

These additional instances of Kussman's involvement with the firm, taken together with the minimal time Kussman spent on the Charles Street/Deer Island matter¹³ and the absence of any Kussman work product in the Masiello files (or any evidence of services performed) concerning the Elm Street property, led the Commission to question the stated basis for the \$2,000 in consulting fees paid to Kussman. The Commission's skepticism was reinforced by the presentation of evidence concerning Kussman's consulting relationship with the J.A. Sullivan Corp., which is described below, following the section on the Kelly case.

Another individual paid by the Masiello firm was former State Senator Vite Pigaga. In 1975, while in between two state jobs, Pigaga received \$2,000 from the Masiello firm.¹⁴ Pigaga testified that this sum was in payment for keeping his ears open around the State House for possible public work for the Masiello firm,¹⁵ but William Masiello stated that the payments were made for Pigaga's help in introducing him to individuals connected with Taunton which resulted in a Taunton Housing Authority contract for the Masiello firm.¹⁶

(d) Entertainment

William Masiello's generosity in wining and dining public officials could well have earned him the title of "The Entertainer." As mentioned in the introduction to the Masiello section of this report, William Masiello testified that "he didn't know how not to pick up a check."

The daily, and nightly, entertainment of public officials and employees constituted a tremendous expense for the Masiello firm. In a period of less than three years, the firm's records showed disbursements totalling over \$9,600 at Jimmy's Harborside Restaurant -- an average of almost \$10 a day. During the same time, over \$2,800 was spent at the Sheraton-Lincoln in Worcester, over

\$2,600 at Joe Tecce's Restaurant, and almost countless tabs at restaurants from Florida to California. In 1973, corporate payments to vendors for credit card billings, restaurant charges, clubs, car rentals and other travel and entertainment expenses totalled \$28,286,84. This amount, which does not include money paid to William Masiello for out-of-pocket expenditures, was about average for the firm. The vast majority of those entertained were Massachusetts public officials and employees, from cabinet secretaries to office secretaries.

One of William Masiello's employees testified that employees were asked to participate in parties for state officials and were given checks for several hundred dollars to be cashed and used to buy drinks for those present; once when a Boston official attending the legislative open golf tournament complained that Masiello never gave him money to buy drinks, William Masiello threw more than \$100 on the table for the official.¹⁸ It was not unusual for Masiello to spend \$50, \$100 or even \$200 at a time on dinners with legislators or other state employees, or to pay for several meals in one day.¹⁹

Raymond Allard, former president of the Masiello firm, testified at length about William Masiello's entertainment schedule, from personal experience. He stated that he accompanied Masiello to Boston from Worcester about twice a week in 1973-1974, although Masiello went in more often, sometimes on a daily basis. Allard said that they customarily drove into the State House lot, parked the car, and made the rounds of several offices -- Charles Kougeas' (lobbyist for the Boston Redevelopment Authority), Senator Kelly's, Senator DiCarlo's and Robert Vey's (at the Boston Public Facilities Department). If it was still morning, Masiello would attempt to have lunch with one of these men, or with Fred Kussman. The favored restaurant was Jimmy's Harbourside.²⁰

According to Allard, the evening entertainment was more extensive:

- A. Generally the evening it would generally end up with dinner at either a -- either Jimmy's Harbourside or possibly at Tecce's Restaurant, and those seemed to be the two most popular places for dinner with one, two, three or more public officials or politicians or whatever, I mean, people that he would come down to see that day.

- A. Well, the dinners would consist of one or more rounds of drinks and a meal and possibly more drinks and conversation about any number of subjects; sports, politics, back and forth or that type of kidding back and forth or that type of an evening. It would last two, three, four hours sometimes.

Q. And ordinarily the size of the group?

A. Anywhere from four to ten.

Q. And who usually paid the bill?

A. In most cases Mr. Masiello.

Q. And ordinarily, what was the size of the bill?

- A. Probably anything from fifty to one hundred fifty dollars, maybe seventy-five, maybe one hundred, in the hundred dollar percentage as an overall average, probably. Possibly more in many cases.²¹

In this fashion, William Masiello developed a day-to-day social relationship with the same people who were, in between meals, approving his contracts, signing off on his invoices, and voting on legislation for public design and construction work. It is not difficult to imagine the effect on the "monitoring" that these public servants were supposed to do.

e. Travel and Conventions

Sometimes William Masiello did more than pay for a meal or drinks. Expense vouchers and receipts kept by the Masiello firm disclose a number of occasions on which Masiello footed the bill for out-of-state trips for Massachusetts officials.

When the Superbowl was played in Miami in 1971, Masiello picked up a \$1,400-plus bill on the spur of the moment so that several senators could enjoy the weekend. When NAHRO held a housing conference in Los Angeles, Masiello saw to it that a member of the Worcester Housing Authority who attended made a side trip to Las Vegas at Masiello's expense. When a Worcester County Commissioner obliged Masiello by driving him to the airport for a California trip, Masiello convinced him, on the way, to come along for free, and threw in a side trip to Las Vegas. Total cost: \$1,284.90.²²

Masiello also spent generously at conventions. At another housing conference held in New Hampshire in June, 1972, Masiello's expense account showed \$400-500 in tabs accumulated in two days, naming several housing officials from the Worcester area as beneficiaries.²³ Masiello made a point of attending such gatherings to keep his firm visible and listen for upcoming projects, with apparent success.

f. Gifts

Audrey Rawson, William Masiello's secretary, kept detailed gift lists which show that public servants received anything from liquor to a hand mixer to lumber at Christmastime.²⁴ In 1973, Masiello bought almost \$400 worth of gifts for political figures from the DiCarlo Furniture Store. The same year, over 70 bottles of liquor were delivered to County officers, housing authority officials, State House aides and doormen, employees at the BBC, the PFD, the Department of Correction, the Comptroller's office and the courthouse. Brian Gould, an employee of the Masiello firm, testified about how he customarily bought, wrapped, and delivered about ten cases of liquor each year to elected or appointed public officials.²⁵

Gifts were not limited to Christmastime, however. The firm sent flowers to officials' wives, appliances to officials' girlfriends, and furniture to officials' apartments.²⁶ Brian Gould remembered picking up a set of golf clubs at the Pleasant Valley Country Club for Senator Kelly, at William Masiello's direction.²⁷ A brick supplier recalled having over \$200 worth of bricks delivered to a D.C.A. employee for a backyard project, at Masiello's request.²⁸ Viewed in the aggregate, the gifts present a pattern of generosity extending throughout state and county offices, throughout the year.

g. Sports Events

William Masiello and his friends enjoyed sports, and his expense vouchers indicate that they frequently enjoyed them together, at the corporation's expense. Paying for numerous games of golf or racquetball, attendance at Bruins games, a season's box at Fenway Park, and an excursion to the Superbowl in Florida all provided William Masiello with opportunities to befriend those whose favor was necessary to the continued success of his firm.

h. Free Services and the Use of the Firm's Credit

Joseph Miller, formerly a designer at the Masiello firm, testified at length regarding design services which were provided gratis to public officials. He produced blueprints and models for a sunporch, bathroom, summer home and room divider all compiled on company time.²⁸ According to his testimony, the firm did not always absorb the expense. He produced his own time sheets accounting for this work which, when compared with those in the firm's files, showed that the sheets were altered and the hours charged to a public project.³⁰ (This incident is covered in more detail in the section on Suffolk County/City of Boston contracts, in Volume 3.

The Masiello firm also provided free services and help for the charities favored by public officials. Free design work for a veterans' club, fundraising for a scholarship fund and donations to various other causes were a method of buying goodwill that was often tax deductible.

Not tax deductible, and usually more expensive, was the extension of the firm's credit privileges to public officials. Audrey Rawson testified that two state legislators used Masiello's telephone credit card for long-distance calls, and one of the legislators also had a Masiello telephone in his apartment and use of the firm's gasoline and restaurant charge accounts. Another official charged over \$700 in auto-rental fees to the firm's account. Most of these charges were paid out by the firm with no reimbursement from those who incurred them.

3. The access that was bought

The methods outlined above were all brought into play by William Masiello at one time or another to give his firm the "edge" in obtaining public contracts. The \$5 million-plus in fees which the firm earned from public agencies is testimony to the fact that these methods were largely effective. But it was not simply the expenditures which produced the desired result; it was also the strategy by which they were used.

William Masiello stated in an interview that he never got a job he didn't know he had before the interview. He exhibited this assurance because he always did the "legwork" in advance. This legwork consisted of learning about contemplated projects in the earliest possible stages and contacting the key decision makers before they narrowed their choices in a way that might eliminate the firm, and then following through each phase of deliberation to ensure success. In some cases, the strategy even included formulating projects and convincing public agencies that they were necessary.

In the 1960s, before the creation of the Designer Selection Board, the strategy consisted mainly of making political contributions to the executive branch, and then keeping close track of upcoming contacts in the various agencies and simultaneously reminding the administration of the previous contributions. But, as Frank Masiello learned, this was not always effective; contributions were not always honored, and money was lost.

William Masiello developed a more elaborate system. As he testified, he paid Senator James Kelly a \$500 monthly cash retainer.³² This retainer served as "seed money," in that Kelly's crucial position in the Senate Ways and Means Committee provided the opportunity to make adjustments and additions to the state capital outlay budget. When money was appropriated and expenditures authorized, contracts ensued.

At the same time, Masiello kept a close watch over agencies. By being in frequent formal and informal contact with department heads, department engineers, aides, administrators and even secretaries, he ensured that contemplated projects would come to his attention while in the planning stages; he even had the opportunity, at times, to affect the formulation of departmental programs. When contracts evolved that interested his firm, he took further action.

In cases involving DSB action, he concentrated on getting enough first place votes from the BBC representative and the using agency representative to merit a place as one of three finalists, and then secured the final selection by approaching the executive most influential in selecting the one out of three. In cases involving continued services, the continued appropriations and visibility

with the BBC were often enough to keep the contracts coming. In county contract openings, continuous political involvement and local credentials served to recommend Masiello's firm.

Once contracts were secured, approval and payments followed smoothly. Friendships with the BBC administrators and the Comptroller's office kept invoices moving and the Masiello firm solvent.

William Masiello's system worked effectively for most of the 1970s. It brought many contracts and attractive fees to the firm, which further enabled him to buy political influence and keep the cycle going until events beyond his control brought it to an end. The sections that follow present concrete examples of the inner workings of the system, as practiced by William Masiello and by the J. A. Sullivan Corporation, another entity investigated by the Special Commission.

B. Masiello and Associates, Senator James A. Kelly
and the Legislative Process

1. What The Masiellos Did For Kelly

During the 1960s, Frank Masiello built his architectural firm on the foundation of public sector contracts. His ability to obtain contracts from the Commonwealth of Massachusetts, Worcester County, and local Housing Authorities accounted for the success of Masiello and Associates (M&A). However, receiving these contracts often required payments to public officials. For example, Masiello's central role in securing the Holyoke Community College contract for the California firm of Daniel, Mann, Johnson and Mendenhall (DMJM) obligated him to Republican fundraiser Albert "Toots" Manzi, for it was only through large cash payments to Manzi that DMJM won the contract.¹ Because Masiello took an active role in promoting DMJM, negotiating the amount of the payment, and sometimes making the actual deliveries, Manzi held Masiello responsible for the commitment DMJM made in return for the Holyoke project.² Manzi pressured Masiello relentlessly during the spring and summer of 1968 concerning DMJM's alleged failure to meet its obligations. By early summer, Manzi was calling Masiello every Sunday to inquire when DMJM would start making its payments.³ This harassment put such a strain on Masiello's personal life that he decided to leave Massachusetts and move his family to Florida.⁴ He sold his home in September, 1968, and moved to Palm Beach, but he maintained an apartment in Worcester, and spent about half of his time in Massachusetts, overseeing M&A's work there.⁵

After establishing himself in Florida, Masiello decided to try to sell his Worcester business, and negotiated with several architectural firms concerning such a sale.⁶ But the right opportunity didn't come until June, 1969, when Masiello returned from a brief vacation to find a message asking him to call Jack McCoombs, an executive of the Kassuba Development Corporation, (KDC) to discuss KDC's acquisition of M&A.⁷ Masiello knew McCoombs, as well as KDC's President Walter J. "Judd" Kassuba, and had worked for them on several projects since moving to Florida.⁸ KDC was headquartered in Palm Beach, and was a rapidly expanding company that developed shopping centers and housing complexes, as well as other building projects.⁹ Masiello acted as a design consultant for the firm and, as construction work increased, suggested they might do well to acquire both his expertise and that of his Worcester firm.¹⁰ Kassuba agreed, and the negotiations in the summer of 1969 between KDC and Masiello resulted.

For the most part, Masiello discussed the sale directly with Kassuba.¹¹ In the course of doing so, he fully informed Kassuba of the nature of M&A's business in Massachusetts. Masiello explained that the firm relied heavily on public

contracts, and that "political contributions", in cash, were often required to obtain them.¹² He specifically told Kassuba of the \$25,000 commitment made to "Toots" Manzi in return for receiving the Gentile School project from the Commonwealth, and described paying \$10,000 of that out of his own pocket.¹³ He mentioned the Holyoke Community College commitment, but made it clear that DMJM would make these payments.¹⁴ An outstanding obligation on the Worcester County Jail and a possible one to the Shrewsbury Housing Authority were discussed as well.¹⁵ McCoombs was also made aware of these matters.¹⁶ Masiello told them these things because he did not want to make any future payments out of his own funds, but rather from the corporation.¹⁷

Kassuba, Masiello testified, was surprised at the "intensity" of the political pressures brought to bear on those seeking public work in Massachusetts.¹⁸ Masiello said that while Kassuba was familiar with making proper political contributions, the procedures Masiello outlined were a "whole new way of thinking for him."¹⁹ Kassuba wondered about the kind of influence Manzi exercised: Masiello made it clear that Manzi was a most powerful figure with the Volpe Administration, and had become even more so under the new Sargent regime.²⁰ After listening to Masiello's "descriptive" tales of the maneuverings of Manzi,²¹ Kassuba asked where Manzi's nickname came from, saying "Toots" is a name for a "sweetheart" but he "'sounds like a real S.O.B.'"²²

Nevertheless, Kassuba recognized the situation M&A was in concerning current and potential commitments. Masiello testified that Kassuba stated that outstanding commitments should be met, but that he'd "like to make this in the form of checks to legal political entities, within the legal limits of the law."²³ Masiello replied that he "agreed with that philosophy also, but (didn't think)... in this one particular instance it would work that way."²⁴ The contributions, Masiello informed Kassuba, had to be personal, not corporate, and mainly in cash.²⁵ In addition to payments for specific contracts, Masiello told Kassuba that the corporation would also be subject to picking up travel, entertainment, and other expenses for various elected and non-elected officials.²⁶

Kassuba, Masiello testified, found this whole state of affairs "quite outrageous"²⁷, but at the same time was familiar with the need to make political contributions to "garnish [sic] favors of one description or another."²⁸ Kassuba therefore asked Masiello how the commitments were to be met, and Masiello told him that generally the necessary money would be paid to Masiello as a bonus, personal loan, or salary increase, and that the corporation would then reimburse him for any personal tax liability incurred.²⁹ On some larger jobs, Masiello said consultants and other firms under contract to M&A

would be expected to pay part of the expenses.³⁰ In the case of some smaller items, such as tickets for fundraising events, Masiello stated he would pay from his own income, as "a personal involvement."³¹ Kassuba found Masiello's approach as "pretty reasonable and logical."³² These matters agreed to, the deal went forward on a handshake on or about August 1, 1969,³³ and some employees of the Worcester office came to Florida to form the "nucleus" of the new operation.³⁴ The sale was formally consummated on November 5, 1969,³⁵ and KDC assumed control of M&A.³⁶ The price was \$200,000.³⁷

Kassuba's desire to acquire M&A naturally tied in with his plans for the new subsidiary. Kassuba intended to use M&A's housing experience to bolster their current operations, and also for expansion into other areas of the country.³⁸ Kassuba decided to use M&A primarily to support KDC and its many other subsidiaries.³⁹ Masiello was advised that M&A was to "gradually phase out" its involvement in public sector work and avoid seeking any new contracts.⁴⁰ Current projects were to be completed, but the Worcester office would then concentrate on KDC projects in the Northeast.⁴¹

It soon became clear that this plan, while apparently acceptable to Frank Masiello, was not being adhered to by his brother, William, who was employed in the Worcester office.⁴² After Frank Masiello's move to Florida, the Worcester office was under the general management of Louis Domian, a registered architect.⁴³ Domian had Gilbert Pan, another architect, as assistant.⁴⁴ William Masiello had limited financial duties, including preparing and reviewing invoices.⁴⁵ He also performed public relations functions, such as entertaining clients, but was expected to do so only after he received prior authorization from the Palm Beach office.⁴⁶ But William Masiello ignored these guidelines, and Frank Masiello soon learned that his brother was entertaining public officials in the hopes of securing new work for M&A.⁴⁷ He was also engaged in fundraising activities for several individual legislators, most prominently State Senator James A. Kelly, Jr. (D-Oxford).⁴⁸ Kelly was a rising power in the Senate, and had been acquainted with both Frank and William Masiello for years.⁴⁹

William Masiello's activities upset Frank Masiello, and also KDC Executive Vice President Jack Gardiner.⁵⁰ Gardiner was a former ranking executive with the John Hancock Life Insurance Company in Boston,⁵¹ and was the KDC officer in charge of the M&A subsidiary.⁵² To become familiar with the organization, Gardiner asked Frank Masiello to write job descriptions of all personnel.⁵³ Frank Masiello negotiated a management contract for himself when he sold M&A to KDC, but was not able to do so for any other employees.⁵⁴ One purpose of the position descriptions would be to justify the retention of employees, including

particularly William Masiello.⁵⁵

The position description memorandum was sent to Gardiner by Frank Masiello on June 17, 1970. It is clear that William Masiello had, in addition to cultivating Kelly and other state legislators, insinuated himself into nearly every area of concern to M&A:

MASIELLO & ASSOCIATES

June 17, 1970

MEMORANDUM

TO: Jack Gardiner
FROM: Frank R. Masiello, Jr.
RE: Individual Position Description

WORCESTER OFFICE

Louis Domian, Architect

Salary Range: \$20,000 to \$25,000

Job Description: Takes over immediately after contract has been signed with firm to program, design, co-ordinate, and supervise production of working drawings and specifications. Also is in charge of over-all field construction inspection and technical administration of every project planned in the Worcester office. He attends client conferences, assists in cost controlling the projects. At the present time he has over 20 projects under his direct supervision. He is a registered architect in Massachusetts and being registered is a requisite of managing the Worcester office. He holds the status of Vice President and is a member of the Board of Directors in compliance with the Commonwealth of Massachusetts law.

William V. Masiello

Salary Range: \$18,600 to \$25,000

Job Description: Has taken over sales promotion in the New England area which was previously conducted by FRM. At the present time he is also involved in arranging for financing with banks, collecting and disbursing funds. Has very good relationships with Board of Worcester County Commissioners, the New England Regional Director of the General Services Administration, Governor Sergeant's office, Mayor White's office, and each of the Chairmen of the important legislative committees in the Commonwealth that rule on our appropriations for construction. He recently has closed the contract for the Worcester County Jail, followed through and obtained the New Westboro Courthouse project contract, negotiated for an add-on to our Concord Prison contract, and is currently working with the General Services Administration on the \$2,000,000 post office addition to the Springfield Post Office. He has taken over client relations and strengthened our client relationships and acquaintance with government officials. He is very active in promoting new projects.

M

HASIELLO & ASSOCIATES

Memo to Jack Gardiner

RE: Individual Position Description

Page 2

June 17, 1970

William V. Hasiello (continued)

He is now scheduling an interview in July at which I will be present to make a presentation on the \$4,000,000 high school in south Worcester County. He is in charge of over-all administration of the Worcester office. His taking over sales promotion and contact with various state and local agencies has released FRM of the burden and he is acceptable to these clients. He is in a position to move more freely in these areas than FRM has in the past.

Joseph Gildor

Salary Range: \$17,500 to \$22,500

Job Description: Vice President, Mechanical Engineer. Registered in states of Massachusetts, Connecticut, Maine, Maryland, and Florida. Can obtain registration in any state he so desires. He is in charge of design and programming, planning and supervision of all mechanical phases of the contract. He is an excellent mechanical engineer and is held in high regard by technical personnel in state, federal, and local governmental agencies. He is able to perform all of the required engineering services for jobs currently being handled out of Worcester. In charge of a two man department and saves the company thousands of dollars by being able to perform this work in-house rather than giving it out as individual subcontracts to outside consulting firms.

Andrew L. Spinazzola

Salary Range: \$17,000 to \$19,500 At the present time his maximum salary in this capacity.

Job Description: Project Job Captain. Is one of more experienced men in the firm. Has had a great deal of experience in planning and programming of prison units. Assists Washington in programming of planning of detention facilities. Also supervises field inspection of construction on Concord Prison and will continue in this capacity for at least four more years on Concord and at least three years on the Worcester County Jail.

Raymond J. Allard, Chief Draftsman

Salary Range: \$14,000 to \$18,000

Job Description: Chief draftsman in charge of all drafting personnel. Oldest company employee, started with firm in 1954. Has excellent knowledge of drafting, field inspection, all phases of architecture and engineering.

M

Despite William Masiello's evident success in promoting the firm, this analysis of his functions only brought him into more severe disfavor with Gardiner. William Masiello, in seeking this new business, was acting directly counter to KDC's overall plan for M&A.⁵⁷ Gardiner told Frank Masiello that he was considering terminating William Masiello, because he did not fit in with the KDC plan and was therefore "superfluous management."⁵⁸ Also, William Masiello's expenses for entertaining public officials and other unauthorized people were very high.⁵⁹

Frank Masiello explained the situation to his brother, and made it clear that if he didn't stay within certain guidelines there could be no alternative but to fire him.⁶⁰ In particular, Frank Masiello told him to avoid involving himself with Kelly and other legislators - both because of the expense incurred and because there wasn't a "whole lot" individual Senators or Representatives could do for the firm: "the contracts (M&A) acquired had been acquired through passage in the Governor's office".⁶¹ William Masiello reacted angrily, and told Frank Masiello that he might attempt to make a financial arrangement with KDC to have the contracts assigned to a new or existing firm of which he might be a part.⁶² At one point, after Frank Masiello admonished him for continuing to spend time with Kelly and State Senator Joseph J.C. DiCarlo, (D-Revere) William Masiello told him they were his friends, and that he would see them on his own time.⁶³ After more warnings from Frank Masiello, extending into the fall of 1970, William Masiello called his brother and told him he was coming to Florida with Senator Kelly to straighten things out at KDC.⁶⁴

At about this time, there was also a shift in KDC's general attitude about M&A.⁶⁵ KDC's rapid expansion had resulted in a very tight cash flow in the organization and, coincidentally, M&A's income from its contracts was greatly increasing.⁶⁶ It had become an "excellent profit center" for KDC,⁶⁷ and the earlier plan to close down the Worcester office changed. KDC planned to allow the Worcester operation to continue as it had, and if things went well, perhaps would even expand it.⁶⁸ This was the policy when William Masiello and Senator Kelly flew to Florida on November 8, 1970, shortly after the election in Massachusetts.⁶⁹

The 1970 elections had been, on the whole, good for both Kelly and William Masiello. Kelly played a major role in the gubernatorial campaign of Boston Mayor Kevin White, but White was soundly beaten by incumbent Governor Francis Sargent. Masiello had also supported White, and at Kelly's request organized a fundraising party that garnered some \$14,000.⁷⁰ White remained Mayor, and shortly afterward M&A received its first contract from the City of Boston, the Dudley-Harrison Fire Station project.⁷¹ That contract, Masiello said, "came

down from the top," through Kelly.⁷² Still, Kelly also had a victory. Not only was he re-elected Senator, but so was Kevin Harrington (D-Salem). Kelly was a strong backer of Harrington for the Senate presidency, and since Harrington had the votes to be elected, it was well-known that Kelly would be named Chairman of the powerful Senate Ways and Means Committee.⁷³ Masiello, of course, was very close to Kelly, and had also arranged a \$2,000 contribution to Harrington made by the consulting firm of McKee-Berger-Mansueto (MBM).⁷⁴ Both men had reason to be satisfied with the 1970 election results.

Frank Masiello had met Kelly in the mid-1960's at the Pleasant Valley Country Club in Sutton, Massachusetts.⁷⁵ Kelly joined him for a drink, and asked Masiello for a political contribution, either \$50 or \$100, which Frank Masiello later made by check.⁷⁶ Kelly, who was a C.P.A., also asked Masiello to consider hiring his firm to do M&A's accounting work. Masiello told him he was satisfied with the present accountants, Joseph B. Cohan and Associates, but that if for any reason a change was necessary, he would discuss it with Kelly.⁷⁷ Other than that, Frank Masiello had little contact with Kelly.⁷⁸ But William Masiello had become one of Kelly's closest friends, playing paddleball with him frequently, driving to and from Worcester with him and dining with him on what "seemed like it was about an every-day type thing."⁷⁹ Yet Frank Masiello had not realized the extent of his brother's relationship with Kelly when the two came to Florida.⁸⁰

M&A expense records show that William Masiello and Senator Kelly were in Florida from November 8, 1970 through November 14, 1970.⁸¹ Masiello flew under his own name, while Kelly's ticket bore the name of Raymond J. Allard, an M&A architect.⁸² Soon after arriving, meetings with Jack Gardiner and Judd Kassuba were held.⁸³ Frank Masiello was also present.⁸⁴

Kelly "coolly and calmly" outlined his position to these men.⁸⁵ He intended to do two things: one, protect William Masiello's job with M&A, and, two, see to it that his accounting firm, James A. Kelly and Company, was hired to work for M&A.⁸⁶ He relied on his future position as Senate Ways and Means Chairman to achieve both goals. First, he stated that the existing M&A contracts in Massachusetts could easily be cancelled or transferred to another firm because M&A was originally selected on the basis of Frank Masiello's position as principal architect. With Frank Masiello now spending nearly all of his time on KDC projects, the BBC might easily decide to re-assess the situation.⁸⁷ Kelly then outlined the Commonwealth's capital outlay process, and the central role of the Senate Ways and Means Chairman. Kelly made it clear that if an agreement could be reached, he could be very helpful to M&A in Massachusetts through the capital outlay process specifically and other matters more generally.⁸⁸

Kassuba and Gardiner understood that Kelly was saying both expressly and between the lines.⁸⁹ Kelly's tone was "firm and direct"; he didn't raise his voice.⁹⁰ Kassuba agree to retain William Masiello, and hired Kelly's firm at a rate of \$500 a month - a rate which angered Gardiner because the "services" Kelly proposed to perform were either being done or would be done by KDC personnel.⁹¹ To make the agreement a little more palatable, Kelly was also to assist KDC in recovering a deposit they had made on land in Revere.⁹² Initially, Kelly wanted to receive at least part of his retainer in the form of expense payments for trips to Florida; this also was agreed to and the group broke up.⁹³ Kelly had made quite an impression on these men. Even Frank Masiello, who knew that Kelly and William Masiello were close, said that this was "his first serious insight into the nature of the beast."⁹⁴

In a sense, M&A immediately began to live up to its agreement with Kelly. Kelly's flight, hotel room, and other expenses, came to about \$300. M&A picked up the tab on this trip.⁹⁵ Soon afterwards, in January, 1971, Kelly, William Masiello, and other Massachusetts officials travelled to the Super Bowl game in Miami. Again, M&A paid for Kelly's flight, and other expenses.⁹⁶ The cost was \$200.⁹⁷ In February, 1971, Kelly again went to Florida with William Masiello, and this time both men were accompanied by their wives. The bill for this trip, in total, was \$1,222.79.⁹⁸ After receiving William Masiello's expense report covering this trip, Frank Masiello sent a memorandum to the Worcester office. The memo, dated March 3, 1971, asks William Masiello "How do you want this to be handled?"⁹⁹ The response on the bottom reads "Frank, Bill told me to have you pay it from there."¹⁰⁰ The response is written and signed by Audrey Rawson, William Masiello's secretary.¹⁰¹ Frank Masiello in turn made a notation on the expense document before sending it to his new supervisor, James Bauchat (Gardiner had left KDC shortly before). The note reads, "Jim, these are the bills on Senator Kelly's trip with Bill. This will be deducted in total from Senator Kelly's area. FRM 3/10/71."¹⁰² Frank Masiello explained that he did this as a means of providing for Senator Kelly's \$500 a month retainer through expense payments: as Kelly submitted invoices for his "services" Frank Masiello intended to pay the difference between the invoiced amount and whatever expenses had already been incurred.¹⁰³ Another example of this practice appeared on an April 2, 1971 expense report submitted by William Masiello. The report concerns \$350 for a membership at the Boston YMCA, and \$185 for one in Worcester.¹⁰⁴ A notation, by Frank Masiello, again appears on this "Bob (Herring, KDC assistant controller¹⁰⁵) this comes out of J.K.'s expenses."¹⁰⁶ Frank Masiello testified that the "J.K." referred to Kelly.¹⁰⁷

Sometime earlier, in February 1971, there was a change in top-level management at KDC. Gardiner left, and was replaced by James L. Bauchat.¹⁰⁸ Bauchat had a long and varied business career, including positions as vice-president and controller of the Banker's Trust Company in New York, and as President of the Sunshine Biscuit Subsidiary of American Brands.¹⁰⁹ Bauchat went to work for KDC in December, 1969, as president of Western division, which was located in Tacoma, Washington.¹¹⁰ He was transferred to the Palm Beach office in February, 1971, where one of the subsidiaries under his direction was M&A.¹¹¹ Shortly after coming to the Palm Beach office, Bauchat decided to travel to Massachusetts to review the Masiello organization there, to look at some completed and current projects, and examine the procedures then in force.¹¹²

Bauchat met privately with Judd Kassuba before leaving for about forty-five minutes to discuss his itinerary.¹¹³ Kassuba told Bauchat of a visit made to the KDC offices some months earlier by Senator Kelly, and explained that Kelly's firm might be useful by providing some improvements in the Worcester cost accounting system.¹¹⁴ Kassuba also informed Bauchat that Kelly was the Chairman of the Senate Ways and Means Committee, and so was responsible for disbursing "significant construction funds."¹¹⁵ Kelly, Kassuba said, "might be amenable" to directing some contracts to M&A.¹¹⁶

Bauchat flew to Massachusetts on or about March 5, 1971¹¹⁷ and was met at Logan Airport by Frank Masiello.¹¹⁸ On the way to Worcester, Masiello reiterated to Bauchat that Kelly had been helpful in directing contracts to M&A. Bauchat was introduced to the Worcester office personnel during his first day in Massachusetts, and accordingly met William Masiello for the first time.¹¹⁹ On the second day, the Masiellos and Bauchat visited several M&A projects,¹²⁰ and arrangements were made by William Masiello for the group to meet Kelly later in the afternoon at the YMCA Executive Health Club in Boston.¹²¹ They did meet Kelly, and also Senator DiCarlo, at around 3 or 3:30 p.m., and decided to have dinner together at Jimmy's Harborside that evening.¹²²

Bauchat was leaving Boston within a day or two, and so went to check in at a Boston hotel for the evening. Frank and William Masiello went with him.¹²³ Frank Masiello told Bauchat that Kelly was pretty "ticked off" because he hadn't heard from Kassuba since the November, 1970 trip to Florida.¹²⁴ Frank Masiello was well aware that Kelly had not yet received any \$500 retainer payments from KDC, though of course some expenses had been paid.¹²⁵ Frank Masiello said he was "hoping (the retainer payments) would go away."¹²⁶

According to Bauchat, he, Frank Masiello, and William Masiello arrived at Jimmy's Harborside about six o'clock.¹²⁷ They went into the lounge and ordered drinks while awaiting Kelly's arrival.¹²⁸ Kelly came in shortly, and surprised

Bauchat by bringing DiCarlo with him.¹²⁹ Kelly immediately lit into Bauchat because he had not heard from Kassuba since late 1970. Kelly was "irate and used pretty crude language."¹³⁰ Bauchat replied that he was new on the job "and one of my first priorities was to see him, to see what kind of association we can work out."¹³¹ This mollified Kelly. Bauchat testified that "he calmed down and began to tell me of his position, the importance of his position as chairman of the Ways and Means Committee, and that this really meant that he was the guardian of the purse strings of the Commonwealth, and then began to tell me the number and extent and the dollar value of the projects that were planned over which he had control and indicated that if we could work something out a substantial number of those projects would be directed to Masiello."¹³² Kelly held the floor during this time; Bauchat said "it was hard to get a word in edgewise."¹³³

At about this point a waiter informed them that their table was ready, and the conversation moved to the dinner table.¹³⁴ DiCarlo left soon.¹³⁵ Kelly again mentioned that he could be useful to KDC, and Bauchat agreed, saying Kassuba was indeed interested in having Kelly assist in recovering the Revere deposit as well as having his CPA firm work at the Worcester office.¹³⁶ Kelly replied, "'Yes, he thought he could be very useful, it would cost \$10,000. He just asked for the money."¹³⁷ Bauchat stated that he was "taken aback," and thought the price was "pretty rich."¹³⁸ William Masiello then interrupted and said he would talk to the Senator alone and call Bauchat back.¹³⁹

Bauchat testified that "the \$10,000 amount bore no relationship to the amount of work that I was asking him to do through his company or to make a telephone call in connection with the deposit."¹⁴⁰ Bauchat "realized at that point it was a straight bribe."¹⁴¹ There was, Bauchat said, "no question" that Kelly was willing to exercise his influence with respect to future contracts for the Masiello firm; and Bauchat agreed that since the \$10,000 did not relate to any CPA or deposit assistance, the only thing Kelly could offer the firm was his influence as Chairman of the Senate Ways and Means Committee.¹⁴² Nothing further happened at dinner.¹⁴³

Frank and William Masiello drove Bauchat back to the hotel,¹⁴⁴ and on the way Bauchat told Frank Masiello that he had "never experienced such a brazen approach in my whole business career."¹⁴⁵ Frank Masiello replied that "that was the way they did business in Massachusetts."¹⁴⁶ Bauchat concluded his trip the next day and returned to Palm Beach.¹⁴⁷

Immediately after his return, Bauchat met with Judd Kassuba and told him that Kelly "had tried to extort money from the Kassuba Company" in the amount of \$10,000. He added that William Masiello was going to call back with a compromise figure.¹⁴⁸ Kassuba reacted "indifferently" and this led Bauchat to believe

that "(Kassuba) and Frank Masiello were willing to pay on a reasonable basis any amount that Kelly asked.¹⁴⁹ The question was not whether or not extortion would be acceptable; the question was whether the amount itself would be.¹⁵⁰ William Masiello did call Bauchat back, and offered a figure of \$500 a month. Bauchat said he thought that was "reasonable" and that Kassuba would agree.¹⁵² After getting Kassuba's approval, Bauchat sent the following letter to Kelly, at Kelly's State House office:

KASSUBA
CORPORATION

March 23, 1971

Honorable Senator James A. Kelly, Jr.
Chairman, Senate Ways and Means
State House
Boston, Massachusetts

Dear Senator Kelly:

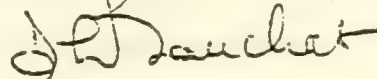
It was a pleasure to talk to you again and I appreciated the insight you gave us into the future growth direction of municipal and other civic groups in Massachusetts.

As you know, we are undergoing a series of organizational changes and one of them involves Masiello & Associates, an architectural firm with offices in Palm Beach, Washington, D.C., and Worcester.

We expect some increase in the volume of work, particularly at our Worcester office. To maintain our profitability it is important for us to restructure our project controls and to establish a cost control system. This would involve the development of a job cost system that would be compatible with our computer operation. We would like your accounting organization representative to meet with us to specifically outline this work. Initially the scope of the job would be accomplished within a \$500.00 per month fee. This would be subject to negotiation as the work developed.

If this is agreeable will you please let me know when we can arrange a meeting.

Sincerely,



James L. Bauchat,
Senior Vice President

JLB/kf

cc: Mr. Walter J. Kassuba
Mr. Frank R. Masiello

Bauchat explain the letter in his testimony before the Commission. The first sentence, concerning "insights" into the "future growth direction of municipal and other civic groups in Massachusetts" referred to Kelly's discussion of the upcoming projects in the Commonwealth.¹⁵⁴ Bauchat's mention of "some increase in the volume of work, particularly at our Worcester office" was a "reminder" to Kelly of his promises to help obtain contracts for M&A.¹⁵⁵ It was his effort to "tie down" those promises. ¹⁵⁶ Bauchat's reference to the accounting work, according to Frank Masiello, reflected his knowledge that although Kelly's firm was on retainer, they were in fact not providing any services.¹⁵⁷

After this March 23, 1971 letter reached Kelly he quickly arranged a meeting with Frank Masiello. The two met at the Yankee Drummer Inn in Auburn, just outside of Worcester in late March, 1971.

William Masiello, who set up the meeting, told his brother that Kelly was very upset about the KDC matter and wanted it resolved. Frank Masiello "reluctantly" agreed to see Kelly.¹⁵⁸ When they met, Kelly told Frank Masiello in "no uncertain terms" what he thought about KDC, the "big-shot" corporation that can't keep their commitment and can't pay their bills...¹⁵⁹ Kelly was very upset with Kassuba, Bauchat and Frank Masiello and told Frank Masiello that if "certain procedures" weren't adhered to there would be all kinds of problems in Massachusetts.¹⁶⁰ Kelly hinted that "contracts could still be cancelled" and current projects disrupted.¹⁶¹ Masiello replied that all he could do was to see Bauchat on his return and explain how angry Kelly was. Masiello assured Kelly that Bauchat would straighten things out.¹⁶²

Masiello spoke to Bauchat soon after returning to Florida, and Kelly's retainer payments began.¹⁶³ On April 12, 1971, a check in the amount of \$1,500 was made out, payable to James A. Kelly and Company,¹⁶⁴ and another, for \$500, was also issued to Kelly and Company on April 13, 1971.¹⁶⁵ The \$1,500 check, Frank Masiello said, covered January, February, and March 1971.¹⁶⁶ He testified that the earlier expense payments were for November and December 1970.¹⁶⁷ The \$500 checks continued each month through May, 1972.*¹⁶⁸ A \$1,000 check was apparently issued in September 1972, but never negotiated.¹⁶⁹ The Kelly firm thus realized a total of \$8,500 from M&A as a result of Kelly's November 1970 and March 1971 conversations.

* Frank Masiello repurchased M&A from KDC in February 1972. The check payments nevertheless continued through May, 1972.

After receiving the two April, 1971 checks, Kelly wrote a letter to Bauchat:

JAMES A. KELLY
CERTIFIED PUBLIC ACCOUNTANT
1203 MAIN ST.
LEICESTER, MASS.
LEICESTER TW 2-0491
WESTROSG PO 6-7093

April 23, 1971

C
O
P
Y

James L. Bauchat
Senior Vice President
Kassaba Corporation
350 Royal Palm Way
Palm Beach, Florida 33480

Dear Jim:

I received your letter of March 23, 1971, our firm will be very happy to discuss a job cost system compatible with your computer operation. I have made available one of my senior men for meetings with Bob Herring and Bill Hasiello on April 22, 23 and 24. Your suggested arrangements will completely satisfy us.

I tried to arrange meetings with Bob Herring and Jim McCormick but because of conflicting schedules it did not work out. If nothing develops before you are due in New York, I believe I can arrange for Jim and I to meet you in New York to discuss the Revere matter.

Very truly yours,

James A. Kelly

JAK:lc

McCormick was the holder of KDC's deposit on the Revere land.

As far as Bauchat knows, the meeting Kelly proposed never took place; nor are there any indications that Kelly ever helped in returning KDC's deposit.¹⁷¹ There is, however, considerable evidence concerning what the Kelly firm did - or didn't do - in the way of accounting work in return for \$8,500 in fees.

Masiello & Associates and its predecessor companies had employed the Worcester CPA firm of Joseph B. Cohan Associates as its accountant since about 1962.¹⁷² The Cohan firm, under the direction of senior partner Herbert Cohan, prepared M&A's corporate tax returns, reconciled bank statements, presented updated financial statements, and in general performed all the necessary accounting duties.¹⁷³ However, after KDC purchased M&A in 1969, the financial record-keeping shifted from Worcester to Palm Beach. In an August 27, 1970 letter to Cohan, KDC Executive, Jack McCoombs wrote in part:

"as you know, we have been consolidating the records at Masiello & Associates at our Palm Beach office. We wanted you to finish the year-end work which ended April 3, 1970 because you were familiar with the records, had kept the records, and knew the Massachusetts tax laws. We are now in the position to take over the bookkeeping functions of Masiello & Associates and, therefore do not need your services in this respect".

... although we will not have you on a retainer as such we would to feel that we can request your services at such times as they are required."¹⁷⁴

As of that date, Cohan & Associates was "finished" doing the Masiello work.¹⁷⁵ Later, when Cohan spoke to William Masiello about this, Masiello told him the Kelly firm had been hired.¹⁷⁶ Masiello said that while Cohan's firm performed satisfactorily, "and maybe someday (would) be back again," the Kelly company "would serve his purposes better."¹⁷⁷ Cohan testified this conversation took place in November or December, 1970.¹⁷⁸

Kelly's landing of the M&A account should have been of great importance to the firm. The retainer of \$500 a month was twice that of the second-largest client, with the third largest paying only \$100 monthly.¹⁷⁹ Nevertheless, Kelly's partner, Paul Daoust, testified that there was "no discussion" about this apparent coup; "I don't recall any big to-do about it." In fact, Daoust stated he never discussed the account in any detail with Kelly.¹⁸⁰ Daoust further said that he did no work on the M&A account, and knew of nothing Kelly did, though it was his "opinion" that he (Kelly) was performing services for Masiello."¹⁸¹ Instead, a staff accountant, Matteo Girardi, was assigned the M&A responsibilities.¹⁸²

Girardi went to work for the Kelly firm in 1967,¹⁸³ and was assigned to the M&A account by Kelly.¹⁸⁴ Sometime in 1971, he was directed to set up a "cost accounting system" for M&A, although he had had no previous experience doing

so.185 To accomplish this, Girardi visited the Worcester office of M&A a "maximum" of six times over a time period of "no more than six months."186 While there, he gathered information as to what "the logical procedure would be" of a project's development from start to finish.187 Girardi testified that he did no other work for the firm, although he did assist in a review of Frank Masiello's personal tax return for a couple of days.188 Girardi estimated that if he had concentrated solely on the cost accounting system, it would have taken him two or three days to complete.189 As it was, he estimated the "maximum" time spent as between 60 and 80 hours "at the most"190 including perhaps 15 hours on Frank Masiello's individual tax return. Girardi's billing rate, according to Daoust, was \$20 per hour.191 Girardi's entire work product is reproduced below:

Masiello & Associates

Client: _____

Job Name: _____

Project No. _____

Project Start Date _____

Project Completion Date _____

Final Summary

Task Phase: _____

Hours

Placement

Budgeted

Actual

Over/Under

Budgeted

Actual

Over/Under

Program Development

Schematic Design

Design Development

Contract Documents

Bid Review

Construction Supervision

Owner's Manual

Totals

Total Project Revenue

Total Project Costs

Profit or Loss

Profit & Loss Summary

\$

\$

[illegible]

Girardi prepared no instructions for this system, did not implement it, nor did he review any similar system in use by M&A.¹⁹³

Girardi's testimony concerning his infrequent work at the M&A office was corroborated by Audrey Rawson. Rawson testified that throughout the time KDC owned the firm all bookkeeping and accounting functions, including tax reporting, were done in Florida.¹⁹⁴ Girardi, she said, came into the office "only two days" and "didn't spend much time (there)."¹⁹⁵ To her knowledge, neither Kelly nor any other member of the firm rendered any accounting services or advice to M&A.¹⁹⁶ She further stated that she had never seen the "cost-accounting system" until shown it by the Commission's staff, and that it was never used at M&A.¹⁹⁷ According to William Masiello, neither Kelly nor Daoust did any work on the account; only Girardi did.¹⁹⁸ William Masiello did not know exactly what services Girardi performed.¹⁹⁹ In fact, he said he thought that Girardi was performing only the routine services, and did no work on a "cost accounting system," the opposite of Girardi's testimony.²⁰⁰ Bauchat testified that he never saw any work plans or product produced by the Kelly company.²⁰¹ When shown the Girardi work product, which he had never seen before, he stated that in his opinion as a corporate financial officer, a qualified systems person could have done the work in "a couple of hours."²⁰² For this, M&A paid the Kelly firm \$8,500.

The Commission attempted to gain access to the Kelly company's billing records for the Masiello account, but were unable to do so. Daoust, under summons from the Commission, testified that all the partnership records had been turned over to Kelly in April, 1978, at Kelly's request.²⁰³ At that time, Kelly had been called before the Legislative Post-Audit Committee investigating the MBM case, and Kelly's connection with M&A had been revealed. Kelly told Daoust that by turning over the records, Daoust might avoid being called as a witness.²⁰⁴ Daoust complied and turned over all the partnership records. However, he did not give Kelly all the client records, including billing sheets. Rather, Kelly told Daoust that he wanted only the Masiello billing records,²⁰⁵ which would show the number of hours put in on the account.²⁰⁶ Daoust flipped through the book until he found the page, removed it, and gave it to Kelly.²⁰⁷ After Daoust first appeared before the Commission he was asked to contact Kelly in order to regain both the partnership records and the Masiello billing sheets. Daoust testified that when he contacted Kelly and requested the records back, Kelly indicated that "he may have some of the partnership records in (his) possession and that he was not about to give them up to (Daoust) or anyone else."²⁰⁸

The Kelly situation did not increase Frank Masiello's status at KDC. Soon after the March 1971 meetings, Masiello said his "charisma began to wear off" at KDC.²⁰⁹ In the summer of 1971, he found it more difficult to deal directly with Judd Kassuba or other top level management; his access had been cut off. At about that time, KDC brought in another architect. It was clear to Masiello that KDC wanted him out; and, for his part, he was willing to leave.²¹⁰ Masiello began to discuss terms of the buy-back agreement with Kassuba, and in February, 1972, repurchased M&A.²¹¹ Masiello had decided to cut off all of his ties with Massachusetts, and wanted to sell his firm to help finance a new architectural business in Florida.²¹² After negotiation with two California firms, Walton Becket Associates and DMJM fell through, William Masiello persuaded Frank Masiello to sell the business to him.²¹³ The terms required William Masiello to buy only 10 percent of the company's stock, and the rest was to go into Treasury stock.²¹⁴ Frank Masiello was to be paid almost \$1,100 a week for five years as a consultant.²¹⁵ Although the sale was not executed until December 7, 1972,²¹⁶ William made it clear that he wanted to be in charge as soon as possible.²¹⁷ Frank Masiello, who wanted to maintain an active role to protect his financial interest, was quickly relegated to the background.²¹⁸ In August 1972, William Masiello was signing M&A checks. He was the new president of Masiello & Associates.²¹⁹

One matter William Masiello decided to change after assuming effective control of M&A was the practice of paying Senator Kelly by corporate check. As mentioned earlier, Masiello was uneasy from the start with the idea of the Chairman of the Senate Ways and Means Committee receiving large monthly payments from an architectural firm obviously dependent on the state's goodwill.²²⁰ Masiello told Kelly of his dissatisfaction with this method of payment in a meeting at Kelly's State House office sometime in the summer or early fall of 1972.²²¹ Masiello informed Kelly that he was aware of the monthly corporate checks and reiterated his belief that this was an unwise thing to do.²²² Masiello then said that he would prefer to pay Kelly the \$500 a month in cash.²²³ Not only was Kelly not expected to perform any accounting services, but Masiello specifically prohibited him from doing so.*²²⁴ Masiello testified that Kelly would help in various ways in state government affairs: directing contracts to M&A, budgeting money for M&A projects, and expediting things generally with state agencies.²²⁶ The checks to Kelly, which continued for

* Joseph B. Cohan and Associates was rehired soon thereafter. Cohan testified that when he took over, the entire year's work for 1972 had to be done; no regular accounting work had been done for that year. Cohan proposed a monthly retainer fee of \$300, which Masiello rejected as excessive.²²⁵

three months after Frank Masiello regained control of M&A, stopped in May 1972.²²⁷ Thereafter, through the fall of 1976, William Masiello paid Kelly in cash.²²⁸

Masiello "generated" the cash to pay Kelly in the same manner as he did for payoffs to other public officials. (See, e.g., Volume 3.) Masiello would often write out a corporate check for \$500 or \$1,000, [payable to himself] cash it, and use the proceeds to pay Kelly.²²⁹ As always, it was important that the payments be tax deductible. At other times, William Masiello would call Audrey Rawson and direct her to make out a check to herself or another employee for an increment of \$500 and have it cashed.²³⁰ These calls frequently originated from Senator Kelly's State House Office.²³¹ Other calls were made from the Harvard Club of Boston, where Masiello and Kelly often played handball, and from Jimmy's Harborside in Boston. In addition to Rawson, staff architects Raymond Allard and Wayne Salo were called on to perform this duty.²³² Finally, Masiello resorted to taking cash kickbacks from suppliers or consultants on his projects. (See "Suppliers", supra.) For example, Arthur Palley from Commonwealth Stationers paid Masiello \$4,500 when Palley's firm became the low bidder on M&A's Worcester County Jail job.²³³ Some of the cash generation schedules developed by Commission staff revealed that in each month from 1973 to 1977 there was generation of \$500 or its multiples.²³⁴ Rawson charged these checks to loan accounts, payroll accounts, or travel and entertainment, at Masiello's instruction.²³⁵

The deliveries of cash to Kelly were similarly made either by Masiello himself or by one of his employees.²³⁶ Masiello testified that he made nearly all of the deliveries, and that his meeting Kelly for the payoff was always prearranged.²³⁷ Among the "unusual" places of delivery -- Masiello saw Kelly nearly every day in 1972-1975²³⁸ and so perhaps could not recall the "usual" deliveries -- was the Harvard Club of Boston, where Masiello said he gave Kelly money on three different occasions: twice in the locker room and once in a unused squash court.²³⁹ At another time, Masiello was at Jimmy's Harborside when he received a phone call for Kelly asking for money.²⁴⁰ Masiello cashed a check in Jimmy's for \$1,000 and brought it to the Massachusetts Turnpike office at the Newton or Weston exit.²⁴¹ He had put the cash in an envelope, labelled it "Sen. Kelly" and left it with an attendant before returning to Jimmy's.²⁴² Once Kelly called William Masiello and asked him to give him the money at the intersection of Routes 495 and 290, just north of Worcester.²⁴³ Masiello arrived first and Kelly shortly pulled in behind him.²⁴⁴ Kelly then got out of the car, and Maseillo handed him the money.²⁴⁵ Kelly had skis on his car, and continued north after getting his payment.²⁴⁶ Masiello backed up and returned to Worcester.²⁴⁷

When William Masiello was not able to make a delivery personally, an employee would have to do so. Audrey Rawson testified that William Masiello would call her with instructions to have a check cashed and the money brought into Boston.²⁴⁸ At these times, Rawson would take the cash, place it in a plain white envelope, and give it to an employee who was going to Boston.²⁴⁹ Architect Raymond Allard made some deliveries.²⁵⁰ If no one planned to go to Boston, Rawson would send Brian Gould, the office boy.²⁵¹ These deliveries were made to Kelly's State House office.²⁵²

Allard and Gould both corroborated Rawson's testimony when they appeared before the Commission. Allard testified that there were

"three to four, maybe five occasions... (when) I was asked by Mrs. Rawson... and I believe Bill Masiello... whether I would drop off an envelope to Senator Kelly's office and you know, there would be a sealed envelope, a plain white envelope with Senator Kelly's name written on the front in ball point pen..."²⁵³

Allard was instructed to get the envelopes to Kelly's office, though he recalled once handing it directly to Kelly.²⁵⁴ Gould, who was referred for employment to the Masiello firm by Kelly,²⁵⁵ also testified to receiving envelopes from Rawson to deliver to various public officials, including Kelly.²⁵⁶ When he delivered the envelopes for Kelly, he left them in the office, with Kelly's secretary.²⁵⁷

By Labor Day 1976, M&A's fortunes had taken a turn for the worse, and William Masiello came to the conclusion he could no longer afford to pay Kelly \$500 a month. Masiello told Kelly this on the way to a lunch meeting at the Sonesta Hotel in Cambridge.²⁵⁸ Masiello rode from the State House to the Sonesta with Kelly, and explained the situation.²⁵⁹ Masiello testified that Kelly did not become angry, but rather he simply said that he (Masiello) was spending money in areas he should not be, and that was why the firm was in a bad way financially.²⁶⁰ William Masiello stopped paying Kelly on or about that day.²⁶¹

From 1970 to 1976, M&A had paid Kelly at least \$8,500 by check and at least \$18,000 in cash.²⁶² M&A also picked up substantial travel, entertainment, and other expenses for him.²⁶³ Kelly and his friends received expensive gifts through Masiello.²⁶⁴ William Masiello also raised additional thousands of dollars for Kelly's political purposes.²⁶⁵ As William Masiello said, and as numerous other witnesses testified, "I think I have clearly indicated... there was corruption between Senator Kelly and myself. I can't be any clearer."²⁶⁶

Former State Senator James A. Kelly, Jr. appeared to testify publicly before the Commission only after a lengthy legal battle. Kelly refused to testify, invoking his constitutional privileges against self-incrimination.²⁶⁷ Kelly was indicted by a federal grand jury in Boston on September 23, 1980 on charges of extortion in violation of the Hobbs Act (18 U.S.C. 1951). He was arraigned on September 29, 1980. The trial is still pending.

2. What Kelly Did in Return

a. Introduction

Senator James A. Kelly, Jr., while serving as Chairman of the Senate Ways and Means Committee for nearly a decade, was one of the most powerful political figures in the Commonwealth in effecting the passage of capital outlay appropriations. Concurrent with Kelly's tenure, the architectural firm of Masiello and Associates operated a thriving business dealing mainly in public contracts which, over the period of 1959 - 1979, cost nearly \$131 million.¹ The Masiello firm depended on new contracts and new appropriations for its livelihood.

In the study of the Capital Outlay Acts, the Commission's staff found evidence that Senator Kelly personally exerted substantial influence over the capital outlay process. This influence involved Kelly's use of his power as Chairman to bring about the enactment, by the General Court of Massachusetts, of appropriations of millions of dollars of taxpayer's money. These appropriations, which were not recommended by the administration, were inserted into the state capital outlay budget and used to fund projects on which Kelly knew the Masiello firm would continue to be the architect and on which the firm would realize hundreds of thousands of dollars in design fees. The explanation of exactly how Kelly performed business favors for Masiello is highlighted by examples of his capital outlay methods and serves as the crux of this section.

Although Senator Kelly did not testify substantively before the Commission, the testimony of William and Frank Masiello indicates the power and influence Kelly possessed. Frank Masiello in a public hearing spoke of Kelly's relationship with M & A:

Q. Senator Kelly brought up the possibility of cancellation of your firm's contracts with the BBC?

A. Yes.

Q. He also brought up the possibility that in his new position he could be useful to your firm?

A. Yes. He outlined that there were some contracts that had not been completely funded, that the capital outlay program under his guidance could provide for -- or would insure getting favorable consideration for the construction dollars that would be required to complete the projects that we had under contract.³

William Masiello testified in a public hearing before the Commission that:

A. Senator Kelly was a chairman of the Ways & Means, and when an architectural fee -- and some of those could be millions of dollars, it was more or less an insurance that [if] a \$30,000,000 project came along that would pay a million and a half dollars, I felt someday he might be in a position to help me.⁴

Q. To help you in terms of getting contracts?

A. I think that's what I mean

Q. Help you in terms of the amount of money that was appropriated in the State budget for the contract in which you were the architect?

A. Probably both.⁵

James Bauchat, a former vice president of the Kassuba Corporation, testified that Senator Kelly had been helpful in directing business to the Masiello firm.

A. Well, he [Kelly] began to tell me of his position, the importance of his position as Chairman of the Ways & Means Committee, and that this really meant that he was the guardian of the purse strings of the Commonwealth, and then began to tell me the number and the extent and the dollar volume of the projects that were planned over which he had control and indicated that if we could work something out a substantial number of those projects would be directed Masiello's way.⁶

Q. Did you have an understanding that Senator Kelly would be willing to exercise his influence with respect to future contracts in the Masiello firm?

A. No question about that.⁷

b. MCI - Concord

Investigation by the Commission's staff has found that the construction and renovation of MCI-Concord best illustrates how Senator Kelly's actions directly benefited William Masiello; how Kelly influenced the appropriation of funds in repayment for all the contributions, favors, and services rendered to Kelly by the Masiello firm; and how Kelly helped the Masiello firm preserve its design contracts at MCI-Concord.

The Department of Corrections (DOC) wished to replace the nearly century-old MCI-Concord complex with a newer institution. The Masiello firm designed the entire new institution which, according to their 1960 master plan, would cost \$7 million, resulting in a structure to house 500 inmates. The actual cost of projects designed by the Masiello firm and completed at MCI-Concord totalled \$18.5 million, housing only 300 inmates.

Kelly's Role in Capital Outlay Appropriations

The Senate Ways and Means Committee, under James A. Kelly, Jr, recommended larger sums of money for MCI-Concord in the capital outlay budget than ever before. Records indicate that the Masiello firm was awarded a number of continued service contracts based on each subsequent appropriation.

Between 1967 and 1973, the Massachusetts legislature appropriated the large sum of \$17.6 million for construction and renovation at MCI-Concord. In some cases the DOC received more money for construction than it had requested in a particular year. In other cases, it received money it had not requested at all. In nearly all cases, it received more than the Governor had requested in his capital outlay budget.

Senator Kelly had a prominent role in the appropriation of that \$17.6 million because of his power as Chairman of the Ways and Means Committee from 1971-1978. A comparison of the frequency and history of appropriations during the period when Kelly was not chairman of the Senate Ways and Means Committee (1967-1971) to the period when he was (1971-1978) will better illustrate Kelly's role.

Before Kelly held the chair, during fiscal year 1967 through fiscal year 1971, the DOC requested capital outlays for MCI-Concord four times. They received only two appropriations out of the four requests, both of which were included in the Governor's budget and passed without amendment by the House and Senate. During the period from fiscal year 1972 to fiscal year 1979 while Kelly held the chair, the DOC requested capital outlays in each of the seven years. They received appropriations in six years.

In the period from 1967-1971, both appropriations went through normal channels, meaning that they were included in House Bill 1, then approved by the House and Senate. In a later period, seven of the eight appropriations did not originate in House Bill 1, but were introduced to the capital outlay specifically by the Senate Ways and Means Committee under Kelly's leadership, or by House Ways and Means under House Chairman Finnegan. Thus Kelly used his power in the Senate to bypass the accepted planning procedure for capital outlay appropriations. A breakdown in dollar amounts show that of the total \$10,032,300 in capital outlay funds appropriated for MCI-Concord during Kelly's tenure, \$6,377,300 (65 percent) originated in the Senate Ways and Means Committee, while \$1,000,000 originated with the House Ways and Means Committee.

The \$4.5 Million Appropriation

Within the period of Kelly's tenure when appropriations to MCI-Concord totalled over \$10 million, the most significant example of Kelly's use of power on Masiello's behalf is the appropriation of \$4.5 million for a renovation program at MCI-Concord in 1974. Even though the DOC had previously requested money for the completion of the Stage IV construction plan, the department had never planned an actual renovation program. Records show that it was unclear just what the DOC intended to do with those funds, if appropriated. Once appropriated, it took the department four years to decide how to use the money. Since it was not the DOC which wanted the money, someone else's interests provided the impetus for the large appropriation. The close relationship between Kelly and Masiello provides a key to whose interests were being advanced.

The \$4.5 million appropriation originated in the Senate Ways and Means Committee, with no recommendations from the Governor. The House concurred with this item, while the Governor used his authority to reduce the appropriation to \$1.6 million. The legislature then restored the appropriation by overriding the Governor's reduction, raising the total back up to \$4.5 million. The Masiello firm received the design contracts which resulted.

Kelly Secures Masiello's "Monopoly" Over MCI-Concord

Evidence collected by the Commission's staff has documented the Masiello firm's success in securing continued service contracts at MCI-Concord. Two facts illustrate the Masiello firm's monopoly over design contracts awarded for MCI-Concord. First, between 1960 and 1977, M & A was the only architectural firm employed at MCI-Concord; and second, M & A managed to secure 37 separate design contracts for new construction and renovation, awarded as continued service contracts when all contracts plainly did not qualify as such.

In addition to Masiello's success in securing continued service contracts, the Commission's staff found evidence regarding Kelly's role in appropriations. The Masiello firm looked for new work which could be engineered only through new appropriations. With his firm's monopoly over design contracts at MCI-Concord assured through the continued services process, Masiello used his close relationship with Kelly to cause capital outlay funds to be appropriated for the Concord project. The Commission's

staff, in studying the Capital Outlay Acts, found evidence that Chairman Kelly added to the budget appropriations for MCI-Concord. These appropriations were not requested by the administration, and Kelly knew that M & A would both continue to be awarded new projects at MCI-Concord and would receive large fees from the Commonwealth for those projects.

The appropriations passed by the legislature to finance the design and construction of all of the M & A projects at MCI-Concord totalled \$24,268,000, making it one of the largest state building projects ever. During this 17 year period, M & A earned approximately \$1.6 million in fees for this work.

Kelly's Appropriation Methods

Kelly's role in the appropriations process can be better determined by examining the way in which the capital outlay budget is formulated. The power and influence residing in the Senate Ways and Means Committee Chair, including the advantage of that seat in regard to the appropriation process, will also be examined.

Capital Outlay Budget Formation: This process can be broken down into seven steps. The first step is the Governor's recommended appropriation in his capital outlay budget entitled House Bill 1. The House Ways and Means Committee reviews House Bill 1 with an opportunity to make amendments, after which the budget undergoes a review by the entire House. Third, the Senate Ways and Means Committee reviews the budget and has the chance to draw up amendments. The entire Senate then considers the budget. The House and Senate decide whether or not they agree to one version of the budget. Generally, they do not.

The fourth step of the process involves cases of non-concurrence, when the budget goes to the Conference Committee for consideration. The Conference Committee constructs a version acceptable to both legislative Houses. The Governor then signs the budget as a whole, vetoes the budget as a whole, vetoes or amends certain items within the total appropriation budget. Finally, the legislature responds to any items that the Governor amends or vetoes. (See the Systems Section of this report for a more detailed explanation.)

In studying capital outlay budgets the Commission's staff found that Kelly inserted line item changes under the auspices of the Senate Ways and Means Committee.

The Chairman's Advantages

In determining capital outlay appropriations, Kelly used certain powers which are built into the Chairmanship of the Senate Ways and Means Committee. First, because the Chairman is appointed by the Senate President, the policies of the Chairman ordinarily are supported by the President. Second, the Senate reviews the budget last, after the House has already passed it. Third, the Chairman ordinarily holds a seat on the Conference Committee which reviews the budget and formulates the final compromise. Perhaps for this reason, the Senate version of the budget prevailed in each of the three occasions during Kelly's tenure when the question of appropriations for MCI-Concord came before the Conference Committee.

Perhaps the greatest power built into the Chair is the leverage that the Chairman can exert on other departments or agencies because of his power to largely control the "purse strings of the Commonwealth."

c. Access to Other Legislative Action

William Masiello testified that his personal access to Senator Kelly was one of the key factors in furthering his economic interests. Masiello made his open access to Kelly widely known, and as a result, many were eager to associate with him.

Masiello recounted that his easy access to Kelly was useful in promoting his firm's interest in many ways, especially concerning legislative word changes in the budget he suggested and Kelly approved.

Q. Could you now describe ... What you mean when you use the word word changes, how your access to Senator Kelly made it possible to have these changes made?

A. ... I went into Senator Kelly's office, namely Mr. Cleo Gillette and I asked that the word be changed.⁸

Q. So, what you are able to do because of your access to Senator Kelly [and] to Mr. Gillette, you would be able to go in and get that word change and not increase the maximum cost of total project cost for the Joseph P. Gentile school...

A. That is correct.⁹

Kelly recommended word changes which were incorporated in legislation, to the direct benefit of Masiello and Associates. These word changes either authorized new projects for M & A or substantially increased the Masiello firm's fees. Masiello described word changes in bills which authorized preliminary design and feasibility studies, and he gave three examples of substantial increases in the estimated construction cost of projects or

spending authorization. Masiello's motivation for requesting these word changes related to the state fee system, in which the architectural and design fees are directly determined by the estimated total project cost, and an increase in estimated project cost, even if that cost is never appropriated, can change the design fee upward. In connection with a word change Masiello initiated in the Joseph P. Gentile School project, designed by his firm, he explained that "six million dollars worth of [project cost] is approximately a half a million in fees to the architect..."¹⁰

In a second example, Masiello testified that he told Frank Hall, Commissioner of the DOC from October 1973 to January 1979, that if MCI-Concord appropriations included the never-built J building (which Masiello wanted) in addition to other buildings the Commissioner wanted, Masiello would be able to get a word change. This change would enable Hall to actually spend all the money in any way he wished.¹¹

Another word change was initiated by Masiello involving the Gentile school in which he testified that he "upped it to \$21,000,000" meaning the total cost of the project.¹² This change was vetoed by Governor Sargent, but successfully passed through the Senate Ways and Means Committee.

These word changes had at least two direct results. The fees for the Masiello firm skyrocketed, and the possibility of the firm getting more increases became progressively greater.

d. Kelly Introduces Masiello to Important Boston Contacts

Masiello testified before the Commission that, in 1970, he conducted extensive fundraising for Kevin White's gubernatorial campaign.¹³ Senator Kelly, at that time a White supporter, introduced Masiello to the campaign. Masiello raised and contributed some \$8,000 - \$10,000 toward the White campaign.

Almost immediately following these contributions, Kelly introduced Masiello to Robert Kenney, Director of the Boston Public Facilities Department (PFD). Shortly thereafter, Kenney awarded the Masiello firm the design contract for the Dudley-Harrison Fire Station with no design competition, thereby initiating the Masiello firm's association with the city. Robert Vey, Kenney's successor as Director of the PFD, subsequently instructed Masiello to sell tickets for White's fundraisers, which he did, further extending the chain of contacts and political favoritism.¹⁴

Masiello also stated that Senator Kelly used his influence with Mayor White and Kenney to include the Masiello firm as a serious contender for the feasibility and space needs study contract for a new City of Boston/Suffolk County Correction Institution at Deer Island. Masiello testified that his architectural firm's prior prison experience was a favorable factor in the anticipated award,¹⁵ but would not admit that the campaign money he paid was the controlling factor; he simply acknowledged that it was a door-opener.¹⁶

e. Masiello as a Go-Between with Kelly

Two of William Masiello's activities with Senator Kelly are worthy of mention. First, as detailed above, Masiello regularly paid Kelly for using his influence and promoting Masiello's interests; and second, Masiello's access to Kelly allowed him to bring the concerns of other people to Kelly's attention. Charles Theodore was one such person for whom Masiello intervened and who was obligated to Masiello as a result. William Masiello alleged that his access to Senator Kelly was directly responsible for Theodore securing a budget appropriation for the State Building Code Commission.¹⁷

Theodore was a structural engineer who was frequently retained by the Masiello firm as a consultant. As described in the report's section on Suffolk County/City of Boston (See Volume 3), Masiello used Theodore's bank account to launder corporate funds intended for political figures. In return, Masiello claimed to have been instrumental in bringing about Theodore's appointment to the State Building Code Commission in January, 1973, and subsequently arranging a meeting between Theodore and Kelly. The purpose of the meeting was to arrange an appropriation for the Building Code Commission.

Fiscal year 1974 was the first year of operation for the Building Code Commission but neither the Governor, the House, nor the Senate had approved or recommended pertinent appropriations within the budget. Four days after the budget had passed through the Senate Ways and Means Committee however, Kelly introduced an amendment appropriating \$170,000 "for the administration of the state building code commission."¹⁸ The Conference Committee accepted the Senate version including that amendment, and the budget was signed by the Governor on June 29, 1973.

f. Kelly's Blank Receipts Document Cash Generating Checks

According to William Masiello and his secretary, Audrey Rawson, Kelly gave the Masiello firm large numbers of blank and paid receipts, tabs and other expense documents for Masiello's use in justifying his expense accounts for IRS purposes. Because much of the cash generated from these expense accounts came back to him, Kelly had a strong interest in covering cash generation from Masiello. Kelly, a Certified Public Accountant, knew the tax laws, knew he was documenting expenses for illegal purposes and was aware of the fact that he was perpetrating a fraud. The Internal Revenue Service has since disallowed some of these expenses and the matter is currently pending.²¹

g. Kelly Assures M & A Contracts

When William Masiello was implicated in the DiCarlo-Mackenzie trial in January and February 1977, he left the Commonwealth. Upon returning and finding that M & A's reputation was declining, Masiello wanted to sell his firm to four of his employees. Masiello changed the name of his firm to Elm Park Associates and made plans to divest himself of his interest in the firm.

Two of the four employees, Richard Brown and Neil Dixon, at Masiello's urging, contacted Senator Kelly and met with him at the State House. Brown and Dixon wanted assurances from Kelly that M & A's hold on state and MDC contracts would remain secure. Dixon testified before the Commission that Kelly said he would make phone calls on the firm's behalf and most likely contacted Frank Hall, DOC Commissioner, and John Snedeker, Commissioner of the MDC.²²

The intervention became moot in April 1977, when the employees refused to comply with Masiello's stringent stipulations for the sale, and the deal fell through.

h. Kelly Offers Masiello Money to Leave the State

According to Masiello's testimony, between March and April 1977, Kelly offered Masiello \$25,000 to leave the Commonwealth before the beginning of the DiCarlo-MacKenzie trial. After the trial ended, Masiello was again offered money -- this time \$50,000 by a Worcester businessman, Peter Consiglio -- to leave the state.

Although the reasons why Kelly wanted Masiello out of the state so desperately are not very clear, a legislative investigation under Governor Dukakis took place which could have worried Kelly, particularly at a time when the reverberations of the DiCarlo-MacKenzie trial were so strong. Despite this, and the possibility of future investigations, Masiello chose not to take the money nor to leave the state. In 1978, Masiello and Associates' contracts with the state were cancelled.

THE J.A. SULLIVAN CORPORATION AND THE BBC

In 1973 and 1975, respectively, the Bureau of Building Construction awarded general contracts to J.A. Sullivan Corporation for the construction of a physical education building at Salem State College and a classroom building at Southeastern Massachusetts University (SMU) in North Dartmouth. The original contract price of each project exceeded \$5,500,000; J.A. Sullivan Corporation's largest previous state or county contract, however, was for a \$1,600,000 boiler plant installation at the Massachusetts Correctional Institute (MCI) at Norfolk, begun in 1969. At the time the Salem State College bids were opened, the Bureau of Building Construction (BBC) had not finally accepted the then overdue MCI Norfolk project. When the SMU bids were opened, J.A. Sullivan was behind schedule in completing the Salem State contract. Despite these facts, the BBC still chose J.A. Sullivan Corporation on the basis of that company's low bids.

The award of the Salem State contract, in particular, deserves close attention. The BBC selected J.A. Sullivan Corporation at a time when insufficient funds for the project had been appropriated; and before the date when the legislature passed the requisite additional funds, American Express corporate charge receipts of the vice president of J.A. Sullivan contain notations indicating that he met with BBC officials several times in New York City and Boston. One month after the contract was signed, the company issued a \$1,000 check to cash, with a notation on a supporting voucher indicating that the money was for Fred Kussman, who was then Administrative Assistant to the Director of the BBC. Kussman worked for the J.A. Sullivan Corporation as a "consultant" from 1974 through 1976, while still retaining his position at the BBC. This coincided with J.A. Sullivan Corporation's work in the Salem State College and SMU projects. Kussman received \$4,000 for his services to J.A. Sullivan Corporation, and, according to John Sullivan's testimony before the Special Commission, Kussman's "consulting" services included work on BBC-supervised projects.

J.A. Sullivan Corporation's performance as general contractor at Salem State and SMU clearly demonstrates that firm's inability to handle successfully projects of such magnitude. The construction history of the two buildings is strikingly similar: in both instances the general contractor was unable to complete the work within the contract specified time. In addition to authorized extensions, unapproved delays averaged nearly thirteen months apiece. In fact, J.A. Sullivan never did finish either building; the BBC found it necessary to terminate the contracts after the company displayed little interest in even manning the sites. (The BBC's own delays in terminating both contracts is puzzling.) Consequently, other construction firms have had to conclude both jobs.

There is also the matter of cash generation. Between 1972 and 1976, employees of the J.A. Sullivan Corporation issued numerous other questionable checks -- some payable to cash, others payable to company employees -- generating many thousands of dollars. Almost all the checks were cashed. Although not evidentially related to the company's two aforementioned BBC contracts, this cash generation is suspect if only because none of the J.A. Sullivan employees involved has been able to explain satisfactorily the disposition of the cash. In addition, the company issued corporate checks to obtain funds evidently intended for political campaigns.

1. CONTRACTOR SELECTION AT SALEM STATE COLLEGE

On June 21, 1973 the BBC received bids for a new physical education center at Salem State College. The multilevel complex would comprise a gymnasium, ice rink, indoor swimming pool, squash courts, classrooms, and equipment and locker rooms. The total estimated project cost was \$7,640,472.* As of August 3, 1973, only \$5, 910,000 had been appropriated by the legislature.

Based on the lowest bid of \$5,598,000, BBC Director Walter Poittrast recommended, and the Secretary of Transportation and Construction, Alan Altshuler, approved on August 3, 1973 the award of the contract to J.A. Sullivan Corporation, subject to the appropriation of the additional \$1,730,472 needed to meet the \$7,640,472 estimated project cost (ex. 1).** The BBC so notified the company, and J.A. Sullivan accepted the award conditioned upon the appropriation (exs. 2, 3). Three weeks later, on August 20, the legislature approved the additional funds and on September 5, the contract was signed (ex. 4).

State law (G.L. c.149 s.44A) requires that a contract be awarded within 30 working days after the opening of public bids. At no time during this statutory period, June 21 through August 3, was the total project cost for Salem State (\$7,287,444) appropriated. By law (M.G.L. c.7 s.42), the BBC can not award a contract to a general contractor unless all necessary funds are available. Without sufficient funding, a given project is either scrapped completely or rebid after the requisite money has been raised. It was therefore most unusual for the BBC to award the Salem State contract with such a large appropriation deficiency, nearly one quarter of the total project cost.

Certain other circumstances surrounding the award are questionable. The first is the issue of J.A. Sullivan's qualifications as the "lowest responsible

*Project cost includes design fees, testing costs, clerk-of-the-works fees, and a change order contingency amount, as well as the actual construction cost.

**Numbered exhibits may be found in Volume 11 of this report.

bidder."* The Salem State contract was, at that time, by far the largest that the company had ever secured. It was more than three times greater than J.A. Sullivan's previous largest BBC contract, the MCI Norfolk boiler plant (\$1,609,000), a project which in August 1973 was two and a half years behind schedule. (It did not receive final acceptance until March 1974.) The delays at that site, coupled with J.A. Sullivan's inexperience on substantially larger contracts, should at least have caused the BBC to review carefully J.A. Sullivan's qualifications. Yet within the BBC's files there is no evidence that any investigation into J.A. Sullivan's qualifications was ever undertaken.

Second, there is evidence that, in the time between the contract award date, August 3, and the actual signing, September 5, Joseph Edwards, vice president of the J.A. Sullivan Corporation, and signator of the Salem State contract on behalf of J.A. Sullivan, met with officials of the BBC in Boston and New York. Edwards's American Express receipts for August 1973, supplied to the Special Commission by J.A. Sullivan pursuant to summons, show that Edwards met in Boston with BBC Director Poitras, and in New York with BBC officials Fred Kussman, Bob Allard and Bill Tibbetts (ex. 5).** While it would not be unusual for representatives of a contractor to meet with the BBC before construction to discuss plans, specifications, etc. (ex. 6), most of the August meetings reflected in Edwards's American Express charges took place before the legislature had approved the crucial appropriation and before the contract was ever signed.

2. PAYMENTS TO FREDERICK J. KUSSMAN

October 10, 1973-check

A further item which raises questions concerning the Salem State contract award to J.A. Sullivan Corporation is a possible \$1,000 cash payment to Fred Kussman of the BBC. Documentary evidence obtained by the Special Commission pursuant to summons suggests that J.A. Sullivan may have been compensating Kussman, the administrative assistant to the BBC Director from 1970 to 1978, for assistance concerning at least the Salem State College Physical Education Building as early as 1973. There is no doubt, however, that J.A. Sullivan paid Kussman "consultant" fees in 1974, 1975 and 1976.

*The "bidder whose bid was the lowest of those bidders possessing the skill, ability and integrity necessary to the faithful performance of the work and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the job." M.G.L. c.149 s.44A.

**Such meetings were denied by both Edwards and Allard in interviews by Commission staff. Kussman, in refusing to respond to questions put to him before the Commission on April 25, 1979 made it clear that he would not respond to further questions concerning J.A. Sullivan.

As administrative assistant to the Director, Kussman wielded a great deal of authority within the Bureau. John Schroeder, J.A. Sullivan's project manager at Salem State, testified before the Special Commission on September 28, 1979 about Kussman's duties:

...if you took a poll of all the contractors in Massachusetts, if they got a direct answer out of the Bureau, nine times out of ten it would come from Freddie Kussman. It was natural to seek his advice when you had some real problems ... Freddie knew the mechanics of the Bureau better than anybody, and he knew how to get things done and the direction to take. He helped me in the past. He has helped a lot of contractors.¹

One month after the Salem State contract was signed, on October 10, 1973, J.A. Sullivan Corporation issued a check (#6220) payable to cash for \$1,000 (ex. 7a). Kevin Cooney, an estimator and office manager with the company since 1970, cashed the check. What is particularly significant about this check is that on the check voucher is written the note, "For Fred Cussman, per KEC," and on the pink check register copy, on the payee line next to "cash" is the note, "For F.C." (exs. 7b, 7c). Apparently, the initials "F.C." had been corrected: someone wrote the initials "F.K.," encircled, in the top left corner of the pink check register copy. Also, on the yellow voucher copy are written the numbers "494," under the general ledger account block, and "1050," under the subsidiary number block (ex. 7d).*

John Gibbs, who worked as a bookkeeper for J.A. Sullivan from February 1970 to November 1973 (and who is no longer employed there), testified before the Special Commission on April 4, 1979 that he prepared check #6220. He stated that he did not know when preparing the check who Fred Kussman was, but that the initials "KEC" he wrote on the voucher referred to Kevin Cooney.² Gibbs did write "For F.C." on the check register copy, but not the encircled "F.K.," and he did not fill in the posting account numbers, 494 and 1050, on the voucher copy; he did not know who did. Gibbs testified that Kevin Cooney told him to write the note, "For Fred Cussman, per KEC," and Gibbs therefore concluded that the \$1,000 was for Kussman.³

Gibbs's testimony, however, has been contradicted by Kevin Cooney. Cooney testified before the Special Commission on July 18, 1979 that he never told Gibbs that the cash from check #6220 was for Fred Kussman.⁴ While it was most unusual for him to cash a check that large for J.A. Sullivan Corporation, Cooney denied that the cash went to Kussman, instead saying it went to John Sullivan, president of J.A. Sullivan:

Subsequent to my brief meeting ... at your [Commission] office, Mr. Sullivan refreshed my memory that the \$1,000 was given to him for a party at one of the hotels in Boston, a Master

*Number 494 was a J.A. Sullivan internal expense account posting number for the Salem State College project; 1050 is a similar accounting code reference for Engineering Services expenses.

Plumbers Dinner of some sort, that is what the money was used for. Apparently, this gentleman [Fred Kussman] was at the party and his name must have been mentioned in some discussion, but I never said it was for any certain individual.⁵

Cooney himself was unsure if he gave the money to Sullivan: "Apparently I did; he [Sullivan] seems to think I did. I honestly did not remember."⁶

It was Cooney's further testimony that John Sullivan indicated to him that the \$1,000 was to be used for tickets at the dinner: "Yes, tickets and entertainment for the dinner, yes."⁷ On the night of October 10, 1973 the Master Plumbers Association (MPA) held its annual banquet; John Sullivan was the chairman (ex. 8). The Master Plumbers Association records for the dinner list the receipt of a \$400 check from J.A. Sullivan on September 17, 1973 for 20 tickets to the dinner. Yet those records contain no entry on October 10 of payments made the Association by J.A. Sullivan (ex. 9). Furthermore, J.A. Sullivan's computer printout of checks issued in September 1973 contains a listing of checks charged to account #717 (travel and entertainment), and indicates a check dated September 14, 1973 for \$400, payable to the MPA Dinner Committee (ex. 10).

When confronted with these facts, Cooney then testified that the \$1,000 from check #6220 was not used for the MPA Dinner tickets.⁸ He could not remember if he attended the dinner: "I don't even know if I was at the dinner that night... I don't remember. I have been to some of them, yes." Either way, he did not know what Sullivan did at the dinner.⁹

Regarding the note "For F.C." and the encircled "F.K." on the check voucher and check register copies of #6220, Cooney had no answer: "I don't have any explanation whatsoever. If it was a correction, it would seem to me the other one would probably be crossed out, but I don't have any explanation."¹⁰ He testified that the 494-1050 posting account numbers used by J.A. Sullivan on the voucher copy referred to Salem State (494) engineering services (1050), but that he did not know who wrote them in.¹¹ According to Cooney, Fred Kussman did provide engineering services for J.A. Sullivan Corporation, but Cooney did not know of any cash payments for services rendered by a professional consultant. Concerning whether the company had a practice of paying for professional services rendered in the past, "It wasn't a common practice, but I am sure it has been done."¹²

John Sullivan's testimony before the Special Commission was largely consistent with that of Kevin Cooney with respect to check #6220. On September 26, 1979, Sullivan testified that Cooney did give him the proceeds of the check on the day of the banquet, but that he told neither Cooney nor Gibbs that the money was for Fred Kussman; instead, it was used to entertain guests (i.e.,

providing food and liquor): "There were bottles of liquor that were bought at the table that were paid for by myself. We drank there at the hotel [the Sheraton-Boston], we went out, I don't remember where to ... that's what the money was used for."¹³ When asked if the money was used for tickets, he replied, "I don't think so. I think those would probably be paid for before we went to the dinner."¹⁴ While asserting that the \$1,000 went toward buying drinks, Sullivan could not name anyone for whom he bought bottles: "I can't remember who was there."¹⁵ He recalled that Fred Kussman may have been there: "I think so, I'm not sure of the year because I think Mr. Kussman was in attendance probably three years I know of. He was an invited guest."¹⁶

Sullivan affirmed that he was authorized by the hotel to sign for drinks and that in fact he did so. But concerning the entries on the check voucher of check #6220, the voucher copy, and the check register copy, all of which indicate that the \$1,000 cash was intended for Fred Kussman as payment for engineering services with respect to the Salem State College project, he offered no explanation.¹⁷ With respect to the account posting charge to Salem State Engineering Services in particular, he said:

Everything had to be charged to a project, that's the way it was done. So, our accountants at the end of the year wouldn't have a lot of missing items, they really had to find out directly what they were charged to and we would charge them to projects.¹⁸

When asked if he made cash payments to Fred Kussman, on October 10, 1973 or at any other time, Sullivan testified that he did not.¹⁹ Kussman also stated, before the Special Commission on March 7, 1979, that he did not receive any cash payments in 1973.²⁰

In view of conflicting evidence, John Sullivan's explanation of the proceeds from check #6220 is not persuasive. Contrary to what he might have told Kevin Cooney, a \$400 check, dated September 14, 1973 and charged to the travel and entertainment expense account #717, was used to pay for J.A. Sullivan's tickets to the MPA banquet. It thus seems incongruent that like expenses (i.e., food and liquor) at the very same banquet should not also be charged to travel and entertainment but to Salem State engineering services. Moreover, based on August 8, 1979 Special Commission staff interviews with MPA and Sheraton Hotel officials, and MPA banquet receipts from Sheraton, all the food and all but two of the drink charges at Sullivan's table were signed for (i.e., not paid for in cash) by John Sullivan.²¹ Six plumbing company executives who attended the banquet pointed out, in other Special Commission staff interviews of June 25,

1979, that there were no "big spenders" that night, that the MPA paid all bills, and that a general contractor would never pay for everyone at the bar.*22

1974-1976 Consulting Services Checks

Beginning in 1974 and continuing into 1976, John Sullivan entered into an oral agreement with Fred Kussman that Kussman would perform consulting services for J.A. Sullivan Corporation for a retainer fee of \$1,000/year, payable by check.²³ Testifying before the Special Commission on March 7, 1979, Sullivan described the arrangement:

... I guess it's an accumulation of different things I asked Fred to do for me, and I guess in scope, real estate, because of our operations in that area, on development of the projects, which is another area we were involved in and we asked Fred to help us there, it was actually interpretations of some of the special conditions that were in the Bureau of Building Construction contracts which I thought Mr. Kussman was an expert in.²⁴

As regards any formal relationship, Sullivan stated: "One time we agreed to give him a retainer of \$1,000 and I'm not sure what year that was. We might have done it a couple of times, and we asked him to bill us for anything that was either over or under that amount, which I assume he did, and, in fact, I think he did."²⁵ In all, J.A. Sullivan Corporation paid Kussman \$4,000 which is reflected in its records: \$1,000 in each of the years 1974, 1975 and 1976, plus an additional \$1,000 in 1976 purportedly for services in connection with a private housing complex in Quincy (ex. 11).²⁶ According to Sullivan, Kussman's work for J.A. Sullivan Corporation included advice on BBC projects, namely a Mt. Wachusett Community College Fine Arts Center and Salem State College's Physical Education Building. Sullivan recalled one instance in 1973 or 1974 when he called Kussman into his office (in Dorchester) to interpret some special conditions of the Salem State contract.²⁷ Kussman's services also extended to two Department of Public Works ice rinks that J.A. Sullivan Corporation was building. Concerning those projects, Sullivan noted, "It's all in the same vein. They were basically on special conditions and what the statutes said and the interpretation of that, and as I saw it I would ask Fred Kussman what did they mean by this." At certain times Sullivan would just speak with Kussman on the phone, at others he "met with him at our office two or three times."²⁸

Further evidence of Kussman's active role with J.A. Sullivan Corporation was a meeting on May 20, 1976 among Kussman, Sullivan, and John Schroeder, the firm's newly hired project manager at the Salem State project. Schroeder's J.A. Sullivan Corporation daily report of May 20 indicates that the meeting was held that night at the Red Coach Grille in Braintree, and his testimony before the Special Commission on September 28, 1979 attested to the same (ex. 12b). He

*There was a cash bar which accepted credit cards.

testified that he believed the purpose of the meeting was to discuss what might be done to get the Salem State building accepted:

The purpose of the meeting as I recollect was to zero in on ways where we might be able to get the BBC off our back and see if Freddie could be of any help. Primarily, the clerk, Jim Harding, was just impossible to deal with...There was no way I could accomplish my objective with the Clerk of the Works on the job...

I have known Freddie going back to Chauncey Street in 1954, '55, when he just started with the Bureau. I leaned on my relationship with him over the years to see if there was a way we could get Jim Harding off the job and if there was a way we could change the attitude of the BBC had for Jack personally.²⁹

Sullivan, in his testimony to the Special Commission on September 26, 1979, gave his view of the meeting:

I can tell you what the intent was. I can't tell you what actually happened. The intent was that we wanted to get a hold of Fred and ask him -- we were submitting change orders and the format was continually changing ... so we were going through these different areas and it was hurting us financially because each time we submitted it, it was incorrect, we submitted it again and we thought Fred Kussman had a lot of expertise in this field and we wanted to find out from him what was the correct way ... that's basically what I know about what we were going to do, and I will be honest with you, I don't honestly know what happened.³⁰

As it turned out, Sullivan was forced to leave the meeting early. Schroeder testified that at that point, since he and Kussman were such longtime friends, they just "talked about the good old days."³¹ Within the next nine months the two men met between four and six times to discuss Salem State.³² As Schroeder saw Kussman:

Freddie was always willing to help me wherever he could, however he could, going back from day one with my involvement with the Bureau of Building Construction. In my opinion, Freddie ran the department to a large degree. He was the only one who would make a judgment. Good or bad, he would make a judgment.³³

Fred Kussman appeared before the Special Commission on March 7, 1979 and testified concerning his relationship with J.A. Sullivan Corporation. When asked if he ever discussed matters involving J.A. Sullivan Corporation and the BBC with J.A. Sullivan employees or Jack Sullivan himself in 1973, he acknowledged the possibility:

Well, he [Sullivan] would have people working he had on his staff, and they would come to the BBC. If they came in 1973, I would have had a conversation with them if they asked me something. Anybody that walks in the front door of the BBC and has a question on procedural matters, I'll talk to them, including John Sullivan or his employees.³⁴

Kussman conceded that, "oh, sure," he had dealings with Joseph Edwards, J.A. Sullivan's vice president until 1975, but not any formal meetings: "Not meetings in the sense of the word. I'm sure in my lifetime I've had a drink with Joe. I've known him for 20 years." Contrary to Edwards's American Express receipts for August 1973 which list Kussman as Edwards's guest on two occasions in New York City restaurants, Kussman denied that there were any events that caused him to

travel to New York at that time: "I can't think of any." In response to questioning about any meetings with Joseph Edwards off the BBC premises in 1973 or 1974 during which BBC and J.A. Sullivan contracts were discussed, he testified that, "If I did, I don't recall them."³⁵

Kussman testified that his J.A. Sullivan Corporation consulting work arose from his friendship with John Sullivan: "I've known Jackie Sullivan for over 20 years, and he and I discussed [in 1974] making myself available for consulting work to him... He said he would have problems from time to time in the course of the year on construction matters, and that he could call on me for advice." Kussman therefore "agreed to work on a retainer basis for him," the amount of the retainer being \$1,000 for the year.³⁶ He stated that he and Sullivan maintained the same terms of the agreement in 1975 and 1976, except that in 1976 he received another \$1,000 for work on a private housing complex on Quincy Shore Drive. He admitted receiving \$4,000 from J.A. Sullivan.*³⁷

Kussman testified that this retainer agreement covered several different services to be performed by him:

Well, people like advice on the complications involving construction, whether it be in the public sector, the bidder or relative to making change order requests of private clients, or making claims for delays of private clients or straightening out non-payment issues that he may have with his subcontractor. Jackie said he would like to call on me from time to time for my advice and opinion, and I said yes, I would moonlight, and I would do it for \$1,000.³⁸

In contradiction to John Sullivan's testimony, Kussman testified that his work as a consultant did not include BBC projects: "Well, I'd help him solve any problems he may have had in his construction business on non-BBC accounts."³⁹ But with respect to Sullivan's BBC accounts, Kussman replied, "If something crossed my desk, the answer would be yes, but I did not, wearing the hat of a consultant, I did not discuss BBC projects." Kussman denied meeting with Sullivan or any employee or representative of J.A. Sullivan Corporation at any time, at any place during 1974 concerning any BBC project.⁴⁰ Yet it was also

*Kussman's consulting services were not limited to Massachusetts firms. He received \$1,500 from E.D.I., a subsidiary of the MBM Corporation (\$1,000 in 1972, \$500 in 1973), and \$250 from MBM in 1974, all for services Kussman claimed he previously rendered to E.D.I. One payment is charged on the E.D.I. books to "real estate services." Kussman testified that he went to Chicago in December 1972 as a paid consultant for E.D.I., to explain an accounting system which he had developed for an E.D.I. presentation seeking a contract from the Chicago School Board. This has been contested, however, by Jack Thomas, a former MBM vice-president, in a written statement dated December 14, 1979. According to Thomas, Kussman was paid the \$1750 by EDI and MBM for expediting the resolution of the MBM delay claim at the UMass/Boston campus project. For further details, see report on MBM, Chapter 5: "Payments in 1972" and "Delay claim in 1972."

Kussman also admitted receiving consulting services payments from the architectural firm of Masiello and Associates: \$1,000 in 1975, and \$1,000 in 1976. These stemmed, he said, from his services concerning the purchase of real estate (1975) and alternatives to the existing Charles St. Jail facility (1976). Again Kussman's relationship with Masiello is in question. For details, see "Influence Exercised on Administrative and Legislative Action," A(2)(c), supra, pp. 97-8, this volume.

his testimony that he could have reviewed documents pertaining to any matters involving J.A. Sullivan and the BBC in 1974, 1975, and 1976: "It's conceivable that matters crossed my desk. That's not saying I had a decision making role in the matter, but it's very possible matters crossed my desk." When that occurred, "I usually took a walk when the J.A. Sullivan matters came into -- in other words, I passed it on to my associates, or to the house counsel."⁴¹

Despite the testimony of both John Sullivan and John Schroeder, corroborated by Schroeder's May 20, 1976 daily report, Kussman denied that he ever reviewed any J.A. Sullivan-BBC documents off the BBC premises: "Absolutely not."⁴² Furthermore, Kussman said that, while "wearing the hat of a consultant," he would never give J.A. Sullivan advice regarding BBC contracts: "Again, not in my capacity as a consultant, and the reason I'm giving a guarded answer is if, in 1974, he ever asked me a question while I wore my other hat, I'm sure I would have answered him."⁴³

Sullivan cited the Salem State and Mt. Wachusett projects as BBC contracts on which Kussman gave him advice between 1974 and 1976, in addition to the D.P.W. ice rinks.⁴⁴ According to Fred Kussman, he never provided Sullivan or any member of the J.A. Sullivan Corporation advice concerning Commonwealth of Massachusetts projects.⁴⁵ With respect to projects on which he did advise J.A. Sullivan in 1974, however, such as Weymouth High School, another high school (Bicknell) on the South Shore, and City of Boston projects, Kussman could not recall even one specific issue or claim: "Not in '74. When we get up to the more current time frame, I will have a better memory, but the specifics back in '74, my answer is I can't remember."⁴⁶

The J.A. Sullivan Corporation maintained no records of what work Fred Kussman performed; there were no timesheets, written work product, or J.A. Sullivan invoices.⁴⁷

Fred Kussman appeared once more before the Special Commission on April 25, 1979. He then refused to respond to all questions regarding his relationship with the J.A. Sullivan Corporation.

3. PERFORMANCE AS A CONTRACTOR

Salem State College

J.A. Sullivan Corporation's performance on the Salem State Physical Education Building demonstrated that the project was substantially more complex than the contractor was capable of handling. Despite a significant extension of the original completion date (almost five months), J.A. Sullivan never completed the project.

The contract, signed on September 17, 1973, allowed 705 days for completion of the work (ex. 14). However, the original completion date, August 18, 1975, proved insufficient to J.A. Sullivan, which requested and received approval for extensions to January 7, 1976. The contractor fell further and further behind schedule. Construction proceeded throughout the entire year of 1976 and on into March 1977, when the BBC invoked J.A. Sullivan's performance bond and terminated the contract. In his March 11 letter to J.A. Sullivan, the BBC Director, Walter Poitras, noted, "The record indicates that the project is now one year and two months beyond the approved completion date. The record also indicates a complete lack of proper personnel by the General Contractor and sub-contractors on the project needed to achieve final completion." (ex. 15). Once J.A. Sullivan had been terminated, its surety company, Safeco Insurance Company of America, was required to complete the work in fulfillment of its contractual/bond obligations (ex. 16); on June 15, 1977 the BBC terminated Safeco from the project, since Safeco had made virtually no progress toward completing the building (ex. 17).

One month after Safeco's termination, the project architect, Frank Siraco of Edward Tedesco Associates, selected three general contractors to review the extent of the punch list* work valued at over \$100,000, and three roofing contractors to review the persistent roof problems (exs. 18, 19). For the roof work, the Departments of Administration and Finance and Labor & Industries approved the \$11,600 bid of Gilbert & Becker, Inc.; Gilbert & Becker completed the roof work in September, 1977. For the punch list items, however, Labor & Industries informed the BBC that the first low bid received for the punch list items could not be used under the terms of Article XXV (Terminations) of the Salem State contract. Therefore, the architect had to submit revisions to the BBC which were finally approved May 3, 1978. On August 7, 1978 T.G. Driscoll Construction, the new low bidder, signed an \$86,000 punch list contract with the BBC. Driscoll effectively finished the remaining work in June, 1979.

The roofing and punch list items reflected at a minimum, a lack of adequate supervision on the part of the general contractor. The subcontractors could not be faulted individually since at various times Sullivan simply did not pay them; in fact, toward Sullivan's termination in March 1977, several subcontractors began requesting and receiving direct payments (under M.G.L. c.30. s.39F) from the BBC, bypassing Sullivan entirely. Furthermore, the unfinished work was not confined to a small number of details; on the contrary, it ran the gamut from roof leaks to carpentry work to masonry refinishing. Both the pool and gymnasium

*A punch list is a written statement describing incomplete and unsatisfactory work required under the construction contract. Punch lists are usually drawn up around the time of a building's completion.

roofs leaked, the result of open or loose seams in the flashing and loose coping all around. Edward Rossi, Associate Director of Engineering Services for the Massachusetts State College System, described the problem in a letter dated May 18, 1977 to the BBC:

Obviously, if the leaks are allowed to continue not only will the effective use of the facility be sharply curtailed, but more importantly, the progressive damage particularly in the winter, will ultimately cause major breakdowns in the basic structural systems and brick veneer walls. [ex. 20]

Leaks apparently were not the only hazard the roofs presented. Frank Siraco wrote to the BBC on August 16, 1977, notifying it of a dangerous situation:

The potential damage to life, limb and property is strongly evident. The metal copings at the subject project are being worked loose by winds and are being carried away. It is possible that people in the area could be injured. Furthermore, property damage outside the building created by loose copings falling to the ground or property damage inside the building created by roof leaks will become more extensive as time passes. [ex. 21]

A sampling of the major items of the punch list conveys a sense of the type of supervision and coordination J.A. Sullivan maintained: several doors were not installed; ceiling tiles needed replacement; much caulking was simply not performed; hardware on many doors and toilets was missing; wall and ceiling cracks were evident; a great deal of waterproofing and pipe insulation was neglected; and the HVAC system was not balanced. The responsibility of the general contractor is to coordinate the work of all subcontractors and ensure that the project is completed in its entirety on schedule. This was not done at Salem State.

The contractor's slow rate of progress was attributable to several things. The magnitude of the project and J.A. Sullivan's relative inexperience were major causes. In addition, the contractor had a difficult time dealing with the subcontractors (because of not paying them) and with the BBC, particularly the clerk-of-the-works, Jim Harding, because it was perceived as making little effort to finish the building. On April 28, 1976, three months after the building was to have been completed, Frank Siraco advised J.A. Sullivan:

During my weekly visit this past Tuesday, it was noted that there was an obvious absence of personnel at the job site. When one considers the amount of work remaining such as replacement of the incorrectly installed floor drains, masonry work requiring remedial action, and major areas of concrete refinishing, both exterior and interior, it becomes apparent that the project should still be well manned. [ex. 22]

Salem State College, which had planned its fall 1976 schedule to include operation of the new building, was forced to request use/occupancy status on October 15, subject to the completion of the punch list items. The college asked the BBC to terminate J.A. Sullivan's contract and complete the work by other means unless the project was completed within 30 days (ex. 23). J.A. Sullivan

was aware of this fact, yet James Donovan, the BBC project engineer, noted that between October 16 and October 25, the J.A. Sullivan Corporation work force averaged just five men working toward completion of a 64 page, \$185,000 punch list (ex. 24). Again, on November 10, almost at the end of the 30 day period, John Berlinquet, the Principal Civil Engineer of the State College System, commented on this lack of personnel in a letter to the BBC: "As you know, the contractor has had as few as two (2) men per day and as many as six (6) men per day to complete his remaining work in the value of some \$150,000." (ex. 25).

Finally, in December 1976, James Donovan contacted Sullivan's surety company by letter and recommended a meeting to discuss the contractor's slow progress: "The project is one year behind schedule with no completion date in the near future, due to the lack of work force by the J.A. Sullivan Corporation and the poor relationship with the various subcontractors." (ex. 26).

J.A. Sullivan's problems went beyond a mere lack of manpower. Frank Siraco met with J.A. Sullivan representatives in February 1977 to discuss items on the punch list. His February 23, 1977 letter to the BBC stated:

We anticipated the resolution of much of the punch list at this meeting. However it soon became evident that J.A. Sullivan Corporation had no intention of participating in the meeting with a positive attitude...the contractor presented a negative mood by rejecting discussion on any item that involved concrete, or a subcontractor that has filed for direct payment or has a suit against J.A. Sullivan Corp..... He [Sullivan] has totally disregarded the contract documents and considers himself the sole arbiter with regards to the acceptability of items of work. With this negative and hostile attitude we can only continue with our opinion that he does not intend to complete this project. [ex. 27]

Robert Garrity of the BBC pointed out in an August 6, 1979 memo to Edward Vaughn, the A&F Deputy Commissioner of Central Services:

One of Sullivan's major problems appears to be that he continually refused to follow the BBC's directions. Sullivan seemed to be particularly fond of submitting numerous change orders on the same date for 'extra work' that he had allegedly performed months earlier without any order or direction from the Bureau. Obviously the BBC could not honor such claims and when Sullivan was asked for backup, he seldom, if ever, produced any. [ex. 28]

The BBC consequently rejected 12 of J.A. Sullivan's last 15 change order requests, which, had they been approved, would have added \$518,000 onto the total project cost.

According to the September 28, 1979 testimony of John Schroeder, whom Sullivan hired in April, 1976 to pull the Salem State project together, John Sullivan himself aggravated the situation:

I believe Jack Sullivan antagonized the Bureau and the architect prior to my coming on the scene. He was not what you would call a fair -- well, he could not look at a picture objectively. He looked at it frequently through Jack Sullivan's eyes. When he went to the project, he couldn't see some of the things that were legitimate problems, which required fixing. This antagonized the Bureau, antagonized the architect, and his son

was the superintendent on the job or one of the superintendents, and he must have had four or five out there. That aggravates the architect and the owner, no continuity with representatives. Jack Sullivan, Jr. was not qualified to be superintendent on that project, a project of that magnitude. The owner knew this."48

In light of such facts (i.e., the unapproved delays, the slow rate of progress, the limited manning of the work site, Sullivan's attitude) the question remains: why did the BBC take so long, 14 months, to terminate J.A. Sullivan? Schroeder himself was puzzled by this delay:

When I arrived on the scene, I did not understand why the Bureau did not take a stand and say Sullivan, you did not perform according to your contractual obligations and you are finished. This bewildered me if they were so upset with them as they appeared to be."49

Schroeder has testified that he met on numerous occasions with Fred Kussman, the Administrative Assistant to the BBC Director, to discuss the Salem State project. As quoted above, he stated that he and Kussman were good friends, and that Kussman essentially ran the BBC, making many important decisions. When questioned as to whether Kussman, who was also a good friend of John Sullivan and who was employed by him as a consultant in 1976, ever suggested that the contract be cancelled, Schroeder stated: "Freddie never suggested that the contract be cancelled."50

It was Schroeder's further testimony that although several top officials in the BBC (among them John Welch, the chief engineer) and the architect, Frank Siraco, wanted Sullivan terminated, the termination would have had to be recommended to those running the BBC, namely Walter Poittrast and Fred Kussman:

I can't honestly remember discussing this with Freddie, but, you know, thinking more about it, there were also in the file from Welch. I believe I have read letters from John Welch saying that they were contemplating terminating the contract and it never happened, and I believe they had given guidelines by which J.A. Sullivan should act and if they didn't, they would terminate the contract. They never followed the guidelines or they never followed their threats."51

As it happened; J.A. Sullivan contested the termination and brought a suit for damages (over \$300,000) against the Commonwealth (exs. 28, 29, 30). The Commonwealth, in turn, has sued J.A. Sullivan for breach of contract. This action is still pending in Suffolk Superior Court.

SMU Fine Arts Building

The Salem State College Physical Education Building did not receive final acceptance until September 1979, six years after construction began, and more than four years after the original completion date. Not surprisingly, J.A. Sullivan fared little better in its execution of the Southeastern Massachusetts University classroom building contract. Signed for an adjusted bid price of \$5,533,000 on March 26, 1975, barely 18 months after J.A. Sullivan had begun work

at Salem State, the contract allowed the company until January 16, 1977 to complete the work (ex. 31). Again, J.A. Sullivan could not meet this deadline. In fact, construction dragged on throughout most of 1977. On February 25, 1977, seemingly aware of its predicament, the contractor posted a job site notice to all subcontractors, establishing a new date for substantial completion: April 1, 1977 (ex. 32). Several days later, on February 28, a month and a half after the original completion date, the architect, Joseph Ruggia of Desmond & Lord, Inc., sent J.A. Sullivan a letter reminding that Company of its obligations:

We have reviewed your letter to us dated February 7, 1977 which in substance appears to be a repudiation of your responsibilities for the coordination and construction of this building.

We have repeatedly stated in past job meetings and correspondence that you as the General Contractor shall supervise and direct the work using the best skill and attention. You the general contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under this contract. [ex. 33]

J.A. Sullivan Corporation could not even meet its self-imposed April 1 deadline, as evidenced by another Joseph Ruggia letter dated June 16, 1977:

We have discussed meeting after meeting, various items of work to be corrected or completed with promises for definite action to take place from you and your subcontractors. This action has not been forthcoming. In fact, the daily reports indicate a drastic lack of manpower on the project since May 31, 1977. [ex. 34]

Having scheduled classes in the building for the fall semester, with such scheduling irreversible, SMU, like Salem State in 1976, was forced to request use and occupancy status on August 16, 1977, despite the fact that at that time not even the HVAC system was functioning (ex. 35). The BBC and the architect did grant use and occupancy on September 6, but with the exclusion of the HVAC system, and all subject to the completion of the punch list.

In the next two and a half months, J.A. Sullivan made little, if any, progress on the job. Walter Flaherty, the BBC's Assistant Chief Mechanical Electrical Engineer, informed the job architect of this on November 17:

At the last meeting I attended at this project you directed Mr. Sullivan, the General Contractor, to correct various areas of concrete block around pipes passing through basement rooms into the corridor air plenum. This is a very serious condition which I feel should be corrected immediately ... also, at our last week's meeting, we discussed the General Contractor's non-compliance with the specifications of furnishing supervision of the mechanical system [HVAC] prior to the acceptance of this project. To my knowledge, nothing has been done in this respect ... I inquired of the clerk of the works if there has been any performance on the punch list since our last meeting on November 4 and he informed me that up until today there has been none. [ex. 36]

J.A. Sullivan was terminated on November 22, 1977 for failure to complete the \$32,000 punch list and for effectively abandoning the project. On that same day, the BBC notified J.A. Sullivan's bonding company, Aetna Insurance, to complete

the project. Aetna delayed action for several months, but eventually retained the J.L. Marshall Company, which concluded the work in the summer of 1978 (ex. 37).

The construction problems extant at the SMU classroom building were in many ways similar to those at the Salem State project: not major construction errors, but simply numerous work details that were not done or done inadequately. For instance, in February 1977, J.A. Sullivan wrote to the BBC complaining that a ceiling design deficiency prevented the installation of the ceiling system (ex. 38). The BBC replied that the problems originated not with the design, but with the construction work performed:

Since the ceiling problems first became apparent, we see the architect as only suggesting corrective measures to accommodate the contractor in resolving problems brought about by the contractor's own doing. We believe that the suggestions should not be interpreted as directives but as methods that would be acceptable to the architect to overcome a problem as brought about by the contractor's own execution. [ex. 39]

On another occasion, July 8, 1977, Joseph Ruggia notified J.A. Sullivan of its responsibility to seal with concrete the two main duct shafts at the basement and penthouse levels; non-compliance would constitute a violation of the fire code and would increase the noise levels in the building (ex. 40). J.A. Sullivan replied on October 24, 1977:

In an effort to determine whose responsibility the work is, we checked through the specifications and have been unable to find where it is covered in the specs. We therefore have no interest in performing this work. [ex. 41]

In a November 9 letter to J.A. Sullivan, the architect reiterated his position that the general contractor was responsible for sealing the duct shafts:

Please be advised that you as the General Contractor are completely responsible for the existing hazardous conditions and are now and have been in violation of the Massachusetts Department of Public Safety requirements. [ex. 42]

Despite the architect's exhortations, the contractor left this item undone.

A further example of J.A. Sullivan's obstinacy arose in early November 1977 with regard to the sealing of pipe sleeves throughout the building, work valued at thousands of dollars. The contractor refused to complete this; in a November 9 letter to Desmond and Lord, J.A. Sullivan stated:

Because of the concentration of piping in the areas where pipe sleeves pass through walls it is nearly impossible to slush them.

The work involved is much more than one would normally expect under the contract, therefore the only way we will perform this work is on the basis of a change order. [ex. 43]*

*The Commission has found that this is a typical method by which contractors try to increase the bid price: by asking for a change order on the theory that, "the work involved is much more than one would normally expect under the contract." If a compliant agency will give the change order, the contractor can underbid the job, then make up the difference in change orders.

Joseph Ruggia's answering letter of November 16 again pointed out that the work was part of the contract:

You were requested to complete this work prior to the installation of the ceiling and fin-tube covers. Again you have failed to perform this work in the proper sequence and now that the finish work has been installed the work is twice as complicated to complete.

Since we feel this work is part of the contract there will be no change order issued and we expect this work to be completed in a professional workmanship [sic] manner as quickly as possible. [ex. 44]

As of J.A. Sullivan's termination date, this work also remained undone.

BBC engineer Walter Flaherty's notes of a site meeting of representatives from the BBC, Desmond & Lord, and J.A. Sullivan on July 13, 1977, six months after the original completion date, reflect additional construction problems:

There appears to be problems with the roof leaking.... It was stated that the punch list items would be finished by the 15th of July. From my personal viewpoint, this date could not be met.... The Designer then indicated that the G.C. was previously informed of outstanding work which has not been completed. This applies to the plumbing, electrical and architectural sections of the Plans and Specs. The designer then re-introduced the fact that in the last few weeks there have been no more than four (4) or five (5) workmen employed on the project.... The Architect also stated to the G.C. that nothing has been done relative to the latest list of windows which are still leaking.... We started to discuss a letter from Frank Linehan, Mechanical Designer ... its content included serious noise problems caused by improper installation of duct work.... Also indicated deviations from accepted sheet metal standards.... There was also a discussion relative to the installation of insulation materials still to be performed. A figure of approximately \$7,000 was indicated to be the worth of insulation still not furnished.... [exs. 45, 46]

Several weeks after J.A. Sullivan's termination, Desmond & Lord prepared an extensive list of items still to be completed or repaired. Among the major areas were leaks from many sources -- the roof, windows, joints, and so forth; mechanical problems (the imbalance of the air system and the malfunctioning of the entire HVAC system); missing hardware items; and the pipe sleeve slushing (ex. 47). Aside from \$23,000 of outstanding change proposals, the estimated cost of unfinished items amounted to \$32,000.

J.A. Sullivan's performance on the SMU project, as at Salem State, reflects substantial difficulties in dealing with and coordinating the work of subcontractors. At Salem State, as mentioned above, several subcontractors filed with the BBC for direct payment; likewise, at SMU, the HVAC, flooring and window subcontractors filed claims exceeding \$100,000. It is not surprising then, that a significant amount of work remained incomplete.

J.A. Sullivan selected a non-filed subcontractor* to do the concrete work at SMU whose past work was shoddy and whose qualifications were questioned by the

*Non-filed subcontractors need not be listed on the general contractor's bid proposal. They may only supply construction materials. All subcontractors who supply labor, however, must be listed and approved by the BBC.

architect. Furthermore, J.A. Sullivan hired this subcontractor without the required BBC authorization. Specifically, the general contractor indicated on the contract that it would perform all the concrete work (ex. 48). J.A. Sullivan performed none of it, instead sub-contracting it out to the joint venture of Columbia Cornice Co. and Circle Concrete Corp. Circle Concrete was a sister company to Columbia Cornice, the same subcontractor that had poured the flawed roof at Salem State (ex. 49). Columbia Cornice, as a filed subcontractor, performed the caulking and waterproofing at SMU (ex. 50). Under the name of Circle Concrete Corp., it was also pouring the concrete.

On April 4, 1975 the general contractor submitted a list of non-filed subcontractors to the architect for approval (ex. 51). It listed Circle Concrete as the concrete subcontractor. Several weeks later, on April 22, Desmond & Lord disapproved the selection of Circle Concrete, noting that, "The responses to all our inquiries were consistently negative with regard to formwork concrete quality." (ex. 52). J.A. Sullivan went ahead anyway with Circle Concrete/Columbia Cornice, as is evidenced from letters from several materials suppliers (ex. 53).

The performance of Circle Concrete/Columbia Cornice at SMU confirmed Desmond and Lord's opinion of that company's qualifications. An October 21, 1975 clerk-of-the-work's daily report indicates that, due to a lack of adequate shoring, a ten foot section of sloping concrete slab on the floor of the auditorium deflected almost six inches (ex. 54). The shoring, which is intended to hold in place and form the concrete along certain lines, simply failed. The job meeting notes of October 29 state that the slab subsequently had to be removed (by jackhammer) and recast, causing further delays (ex. 54).

Circle Concrete remained on the site unofficially. The BBC never acknowledged its status as a subcontractor because J.A. Sullivan never listed it as such (ex. 55). The general contractor's actions, therefore, constituted a violation of Article XXI of the construction contract which provided that no part of the contract could be sub-contracted without the written consent of the BBC. What occurred was that the BBC assumed J.A. Sullivan to be pouring the concrete, whereas, in fact J.A. Sullivan had an agreement with Circle Concrete/Columbia Cornice that that entity would perform the work instead.

The general contractor has contested its termination at SMU citing, among other things, defective design (of the HVAC system) and substantial completion of the building (ex. 56). J.A. Sullivan neglected to mention that, it not only failed to finish the work within the contract specified time, but also failed to finish it at all. As with Salem State, the company has sued the Commonwealth for damages resulting from the termination. This action is also pending in Suffolk Superior Court.

4. CASH GENERATION

Between 1972 and 1976, employees of J.A. Sullivan Corporation wrote and cashed more than \$18,000 in corporate checks, many of which were made out to cash, others to certain individuals. What is significant about this generation of cash is that there is little recollection among the people questioned as to the disposition of this money.* In short, the ultimate use of the proceeds from these checks remains largely unknown.

Political Contributions

Among this group of cashed checks were two that appear, from notations in the J.A. Sullivan records, to have been intended for political campaigns. The first, check #12290 for \$400 dated September 3, 1975, and payable to cash, was signed by Kevin Cooney and cashed by Barbara Manning, an estimator/bookkeeper for J.A. Sullivan from 1970-1976 (ex. 57a).

On the check register copy is written the number 717, the account number for travel and entertainment (ex. 57b). An entry on J.A. Sullivan's accountant's work papers for travel and entertainment expenses indicates that the money was used to purchase tickets for the Salem Mayor's reelection dinner (ex. 58). A footnote on the account reads, "tickets to Salem Mayor reelection dinner per K. Cooney 10/17."

Prior to testifying before the Special Commission, Cooney told the Commission staff, in a July 3, 1979 interview, that he probably gave the \$400 to Roger Snow (the job superintendent on the Salem project) or to J.A. Sullivan vice president, Joseph Edwards.⁵³ Yet, under oath on July 18, 1979, he was unsure to whom he gave the money.⁵⁴ To his knowledge, neither he nor anyone else he knew attended the reelection dinner.⁵⁵

During his appearance before the Special Commission, Cooney testified that, although he did not purchase the tickets and did not know who else might have, he was unsure how he learned that the proceeds from check #12290 were to be used to buy the tickets: "I don't know. I probably asked the superintendent on the job or something else. I don't know how I came about with the information."⁵⁶ Neither did he participate in any discussions as to how check #12290 was to be charged on J.A. Sullivan's books.⁵⁷ In October 1975, J.A. Sullivan's outside accountants, the Gerald T. Reilly Company, raised the matter of the \$400 check

*It would appear that this cash was not used to meet minor, ordinary corporate expenses. John Gibbs has testified that, although the J.A. Sullivan Corporation did maintain a petty cash fund, this fund never exceeded \$100 during his employment there.⁵²

with Cooney. At that time, he knew that the item was charged to travel and entertainment, yet the accountants wanted to know specifically what the check was used for.⁵⁸ One of Reilly's accountants, Dale Southworth, told the Commission staff in a June 20, 1979 interview that he noticed that an invoice for the check was missing, so he questioned Kevin Cooney who told him that the \$400 was used for tickets for the Salem Mayor's reelection.⁵⁹ On this point Cooney said, "I don't know how to explain it. If he calls me and asks me what check number so and so is for in the amount of \$400 for cash, and I have to go and ask somebody and tell him, that is all I know about it."⁶⁰ Although claiming that he did not know, in September 1975, that corporate campaign contributions were illegal under state law, Cooney could not explain why check #12290 was not made out specifically to the Mayor's reelection committee.⁶¹

Peter McSwiggen, who worked for Salem Mayor Levesque's reelection campaigns in 1973, 1975 and 1977 (as manager in 1973 and 1977), had no knowledge of a \$400 contribution by anyone from J.A. Sullivan Corporation to the 1975 campaign. In a Special Commission staff interview on July 3, 1979, he stated, however, that it would not be uncommon for the fundraisers to sell tickets at the different construction sites at the time. In fact, he was sure that the Mayor's people would have "hit" the Salem State job with \$50 tickets to one or two of the Mayor's parties.⁶² McSwiggen said that, although he was campaign manager in 1973 and 1977, he played a limited role in the 1975 campaign.⁶³ It is Kevin Cooney's testimony that those employees of J.A. Sullivan who knew McSwiggen in any capacity were "people that worked on the job [Salem State] and maybe Joe Vasapollo at the time. He was the project manager."⁶⁴ Cooney himself might have met him, "probably up on the job. I don't think so, but it is possible I did."⁶⁵ According to Peter McSwiggen, who also worked as a bricklayer on the Salem State College job, the two did meet once during the project. He also stated that he had met Joseph Edwards and John Sullivan there once or twice as well.⁶⁶

Neither Barbara Manning, who cashed check #12290, nor John Sullivan himself, has been able to explain what was done with the check's proceeds. Manning testified before the Special Commission on May 2, 1979 that she was not aware of any payments or contributions to candidates for public office in Massachusetts.⁶⁷ Sullivan testified, on March 21, 1979, that he did not ever remember authorizing the check, nor did he have any knowledge of where the money went.⁶⁸ As to the check being charged to the travel and entertainment account, Sullivan pointed out that the account was for general office purposes, and that it pertained to no specific project.⁶⁹

The second check that seems to have been intended for a political campaign was check #E375 for \$1,000, dated April 27, 1976, payable to John A. Sullivan, and drawn upon the corporation's New England Merchants Bank account; strangely, it has no endorsement on the back (ex. 59a). Authorized by Barbara Manning, it was charged on the voucher (ex. 59b) to posting account #5260. Next to the number 5260 on the voucher is the notation, "Mayor Hannon Reelection Committee." "Mayor Hannon" refers to the mayor of Quincy, Massachusetts in 1976. (Evidently this check was intended for his campaign.) John Sullivan, when asked if he knew of any political loans or contributions made by J.A. Sullivan Corporation during the period from 1968 to 1979, declared, on March 21, 1979, that, "If I am going to answer that question in a general tone, I would probably say yes. If you're going to ask me a specific time, I am going to say I don't know."⁷⁰ As for account #5260, Sullivan could not name the items in it: "I wouldn't know."⁷¹ Again, he "wouldn't know" if that was a particular account for special contributions.⁷² He refused to respond to questions about the disposition of proceeds of check #E375.⁷³ Although no records exist of specific contributions made to Mayor Hannon's campaign committee, a worksheet for account #5260, prepared for the J.A. Sullivan Corporation by its accountant, the Gerald T. Reilly Co., dated September 30, 1976 and entitled "Contributions," lists contributions as they were entered in the company books (ex. 60). Among these was journal entry #46, the \$1000 check in question. However, as evidenced by his worksheet, the accountant subsequently debited the \$1000 item from that account. He then charged it to J.A. Sullivan's Loans Receivables-Officers account.

Checks Deposited or Cashed by Barbara Manning

Among the remaining J.A. Sullivan Corporation checks in question was a group cashed by Barbara Manning over a 20 month period, from August 1974 to March 1976, totalling more than \$7,000. For the most part, Manning could not recall what happened to the money once it left her hands.

Two of these checks were charged to posting account number 494-1050, the J.A. Sullivan code for Salem State engineering services.* Check #9044, dated September 5, 1974 for \$1,000 payable to cash, was cashed that same day by Manning (ex. 61a); the voucher indicates it was posted to account 494-1050 (ex. 61b). Barbara Manning testified before the Special Commission, on May 2, 1979, that, although the check and voucher were both prepared by Patricia Rust, a bookkeeper with the company from August 1973 to May 1974, only John Sullivan would determine how checks were to be posted on the books.⁷⁴ The proceeds from #9044 might

*The same code was used for check #6620, in the amount of \$1,000 payable to cash and dated October 10, 1973. This check is discussed at pages 136-140, supra.

have gone to Sullivan however: "Well, if I didn't deposit it into any of the accounts, I had to give it to Jack Sullivan." She didn't think she deposited the money, so, "I would have had to give it to Jack Sullivan because I know I didn't keep it."⁷⁵

It was John Sullivan's September 26, 1979 testimony that he did not know of the \$1,000 from the check, nor could he even recall if Manning gave it to him: "I am not going to say she didn't, I'm just saying I don't remember."⁷⁶ As to check #9044 being charged to Salem State engineering services he stated, "the question of charging it to the project was a decision of mine and whether it could have been charged to travel and entertainment or could have been charged to something else. that was probably where I asked them to charge it, and that's where they charged it."⁷⁷ When asked if any engineering services were performed at Salem State at that time for \$1,000, Sullivan said he could not remember any.⁷⁸

The other check posted on the Salem State engineering services account was #10570, dated February 26, 1975 for \$1,000. It was made payable to Barbara Manning. She did not cash it, but deposited it into the New England Merchants National Bank two days later, as evidenced by a deposit slip (ex. 62a-d). A notation below her endorsement of the check reads, "Pay to the order of John A. Sullivan (for deposit only)." At the same time, as evidenced by the deposit slip, Manning deposited the additional sum of \$2,453 into the bank. Under questioning, she recalled depositing check #10570 into Sullivan's personal account, but did not know what he did with the \$1,000 deposited.⁷⁹ With respect to why the check, which was deposited into Sullivan's account, was not made payable to him at the outset, Manning replied, "Only so that I could -- maybe so I could cash it."⁸⁰ She had absolutely no recollection of the \$2,453 item which she also deposited.⁸¹ Regarding the posting numbers on the voucher, 494-1050, she testified that she knew of no one who performed engineering services for the J.A. Sullivan Corporation on the Salem State job.⁸²

On the matter of check #10570 and its deposit into Sullivan's personal account at the New England Merchants Bank as shown by the deposit slip, Sullivan simply could not make the association:

There's no way to do that ... I can't answer that to you, there is no association between the two. If you remember, I said I don't remember. If you keep continuing with this testimony I don't relate that [the \$1,000 check] to this [the deposit slip]. I don't remember that, so therefore, I can't relate to it unless there is a number here that related to that check, I will be very happy to answer, yes."⁸³

Altogether, J.A. Sullivan Corporation issued three checks for \$1,000, all charged to Salem State Engineering Services: #6220 in 1973, #9044 in 1974, and #10570 in 1975. John Sullivan could not account for the cash from any of these.

It was his testimony that he used none of this money to pay Fred Kussman, to reimburse himself for past or future payments to Kussman, or to pay any government employee, elected or appointed official or any candidate for public office.⁸⁴

Manning Checks Charged to Bidding Expenses

From August 1974 to August 1975, J.A. Sullivan Corp. made four checks payable to Barbara Manning; these were all charged to the bidding expenses account, (ex. 63) as shown on a single page work sheet prepared by the Gerald T. Reilly Co. for J.A. Sullivan, dated September 30, 1975. The largest, #11137, dated April 24, 1975, was for \$3,500 (ex. 64). Manning stated that she cashed that check at the South Boston Savings Bank near Neponset Circle where she and Sullivan had a joint savings account, though the check was drawn on the New England Merchants Bank which itself had an office near Neponset Circle. The reason for that was, "probably because there is enough money in that savings account to cover that cash, I would say." There was evidently not enough in the New England Merchants corporate account, she said, to cover it.⁸⁵ As to what she did with the \$3,500, she could not recall: "I can say I either gave it to Jack or I put it in the savings account, checking account, but I can't honestly say what I did with it."⁸⁶ She didn't deposit the check in the savings account, since that account was in the bank where she cashed it; and the checking account was at the New England Merchants Bank nearby, the bank from which the check was drawn. The only alternatives she could suggest were, "That I either kept the money myself or gave it to Jack Sullivan." She testified that she did not keep it herself.⁸⁷

Manning testified that she would not find it unusual, in her experience handling Sullivan's financial affairs, that he would want an amount of money of that magnitude in cash: "I'm thinking of -- Well, I'm thinking of Jack, for instance, if he wanted to buy stock or something and I can think of an instance where Jack would borrow two thousand, three thousand dollars from the company, like through an officer's loan account, or that type of thing."⁸⁸ She said, however, that Sullivan wouldn't normally charge money from the corporation to the bidding expenses account, and that there was an officer's loan account, an account to which she would charge money that he borrowed from the corporation.⁸⁹ But she did not discuss with anyone how check #11137 was to be charged: "No, I don't know because I don't remember what it was for."⁹⁰

With respect to check #11137 for \$3,500, John Sullivan testified on September 26, 1979 that he did not remember if Manning or anyone else gave him the cash from it. Once more, he had no idea where the money went.⁹¹ Bidding expenses,

he explained, included travel expenses: "If I had to go anywhere to look at a project, I would take monies with me, and whatever it cost to go and whatever my expenses were at the time wherever I was, that's what we would call bidding expenses when I was looking at a project." But, he stated, those were not necessarily travel expenses: "Not necessarily, no, it is not. We would charge it to bidding because it ultimately would end up in the cost of the project. If we were not successful, I don't know what the accountant would do with it."⁹² As for any travel expenses amounting to precisely \$3,500. "Well, that's not gearing that to -- would be \$3,500, probably the work in the sense that I was going somewhere and by the way, I am not using this particular case, I am talking about bidding now, that I would ask for particular amounts of money, that probably would cover for whenever I was going and I would probably bring the slip back for it. but again, I just can't remember the \$3,500 in this case." Though it was customary for him to maintain receipts and invoices when looking at a project, he stated that this was not always done.⁹³

Again, Sullivan affirmed that he gave no portion of the proceeds from check #11137 to Fred Kussman or to any government employee, elected official or candidate for public office; nor did he reimburse himself for payments to Kussman, government employees, elected officials or candidates for public office.⁹⁴

The three other checks made payable to Manning and charged to bidding expenses are as follows:

Check #12147, dated August 20, 1975 for \$500 (ex. 65a). An invoice signed by Manning indicates that the money was for plumbing estimates she performed (ex. 65c). She could not recall the details: "I don't remember the specific project, but a plumbing estimate would be done by me."⁹⁵ Though Manning cashed the check, she was unsure if she had considered the money her own, much less what she did with it. Still, she testified that she charged the check to bidding expenses: "Well, Jack would have told me to do it."⁹⁶

Check #10885, dated April 4, 1975 for \$290 (ex. 66). Manning endorsed this check over to the Malibu Beach Realty Trust: "That's the real estate trust owned by Jack. It's the real estate trust, it's the trust that his building is in."⁹⁷ The trust owned the house she was living in: "That's where I pay the rent."⁹⁸ She believed the check to be a rental check: "That's what I am thinking. I think when I first moved in the house the rent may have been around that. Now I am trying to relate."⁹⁹ When questioned as to how it would happen that she would be using a J.A. Sullivan corporate check to pay rent to the Malibu Beach Realty Trust for her own rent, Manning said, "I don't know. I can only think if I had cash and gave it to Jack and he put it in his pocket."¹⁰⁰ She

testified further that she didn't participate in charging that particular check to bidding expenses, nor did she discuss how it would be posted with anyone; only Sullivan would make the decision as to how to post it.¹⁰⁰

Check #8806, dated August 7, 1974, was for \$137.60 (ex. 67a). It is evident that this was charged to bidding expenses, since in the upper left corner of the check is the notation "bidding and expenses" and on the voucher (ex. 67b) is written the number 600, the code for bidding expenses. A handwritten invoice of hours and amount was also attached to the voucher. According to Manning, she did not know why the check was issued to her by J.A. Sullivan Corporation: "I can't really answer truthfully that. I do know that it was for -- It looks like overtime, but Monday, Tuesday, and Wednesday were the hours it says I would have been working anyway, unless I was on vacation and went back."¹⁰² Those hours included hours within her normal working day in 1974, nine to five. The money she received from J.A. Sullivan was for services rendered on or about August 1974 with respect to bidding, money in addition to her regular salary: "Yes, this is the invoice I was speaking about that I had seen before that I put in for extra hours. It would have to be extra," despite the fact that those hours were within the normal day.¹⁰³ Manning could not recollect what bidding work she did for the money, "No, I couldn't tell you." Nor did she know if anyone might have told her to prepare the invoice (ex. 67b).¹⁰⁴

Finally, concluding this series of checks involving Barbara Manning, she herself signed and cashed two checks payable to cash in 1976:

Check #13921, dated February 5, 1976 for \$500 (ex. 68a). Barbara Manning admitted that she signed and cashed the check and that she gave it to John Sullivan: "I would have given it to Jack."¹⁰⁵ She also stated the check was charged to account number 4175, the West Warwick account (ex. 68b). She did not know what the subsidiary number, 1900, stood for, even though Sullivan told her to charge it to those numbers.¹⁰⁶

Check #E190, dated March 30, 1976 for \$400 (ex. 69a). As with #13921, Manning testified that she prepared this check to cash, signed it, and cashed it. From there, "I must have given it to Jack Sullivan." At Sullivan's direction, she posted the check to account #5480, though she did not know what account that was. Moreover, once she gave Sullivan the \$400, Manning did not know what he did with it.^{107*}

*There are other examples of cash generation by J.A. Sullivan Corporation not discussed at length here. For example, during his tenure at the J.A. Sullivan Corporation, John Gibbs prepared a certain group of checks amounting to nearly \$8,200. Two of these, prepared in February 1972 for Joseph Edwards and cashed by

Mel Daniels Check Voucher

Of the many checks issued by J.A. Sullivan Corporation with incomplete explanations, there are a few -- such as check #6220 with the "for Fred Cussman" voucher entry -- which have some contemporaneous evidence of their disposition. Another such check is a \$150 check to cash, #5987, issued September 10, 1973. Next to the word "cash" on the payee line of the voucher is written the name Mel Daniels, with "Norfolk T&M" (time and materials) above that (ex. 74). By all indications, this was \$150 intended for Mel Daniels, the BBC project engineer on the MCI Norfolk Boiler Plant project on which J.A. Sullivan was the general contractor. In a Special Commission staff interview, Daniels stated that his car was damaged on the work site, and Sullivan was reimbursing him from the insurance claim proceeds. Why, then, wouldn't Sullivan have made the check directly payable to Daniels instead of to cash? During testimony on March 7, 1979, Sullivan admitted he was familiar with the name of Mel Daniels, but denied that he ever employed him or made payments to him.¹¹¹

A third such check, #6685 (ex. 75a), was issued on December 7, 1973 by J.A. Sullivan Corporation for \$140 payable to cash; it was endorsed by Joseph Edwards. The notation on the check indicates it was for 10 tickets to the BBC Christmas party. A note attached to the check reads, "check for cash \$140.00, Bureau of Building Const. Christmas Party Tickets. Not taking Corp. checks this year." (ex. 75d).

5. CONCLUSIONS

In hindsight, the Salem State College and SMU classroom building contract awards should never have been made. J.A. Sullivan had no experience on projects of such magnitude. The company's previous high contract, the \$1,600,000 MCI Norfolk boiler plant, was already delayed in late 1973; J.A. Sullivan could not even manage that. But for some reason the BBC accepted Sullivan's bid for the Salem project, despite being short a full one quarter of the total project cost. Similarly, when the SMU contract was awarded, J.A. Sullivan was not even on schedule at Salem State; in essence, it had yet to establish a reputable construction record on any BBC projects, much less large ones. John Sullivan, while before the

him were each for \$2,500 (#2395, ex. 70; #2449, ex. 71). Gibbs testified before the Commission on April 4, 1979 that, despite having prepared them, he knew nothing of the proceeds from those checks.¹⁰⁸ A third check, #2439, dated February 18, 1972 in the amount of \$595 payable to cash and signed by Joseph Edwards, was cashed by Gibbs (ex. 72), but he could not say what he did with the cash.¹⁰⁹ A fourth and last check (#3518), dated June 21, 1972, payable to cash in the amount of \$2,700 and signed by John Sullivan, has no endorsement. Gibbs stated he prepared this as well, but knew nothing of its proceeds (ex. 73).¹¹⁰

Commission on March 21, 1979, testified that the Mt. Wachusett Community College Fine Arts Building was the only building of that type (i.e., a classroom building) for which J.A. Sullivan Corporation had ever received a contract.¹¹² And even that, a \$2,400,000 project, was not on schedule in 1975.*

The issue of J.A. Sullivan's relationship with Kussman is an important one. J.A. Sullivan, under contract with the BBC, was paying Kussman, a highly influential employee of the BBC, for services related to BBC and non-BBC projects alike. Kussman not only denied working for Sullivan on BBC projects, he also denied ever meeting with J.A. Sullivan employees on occasions when the evidence would indicate otherwise. By contrast, Kussman could not recall a single non-BBC problem which he helped Sullivan to resolve. Even accepting Kussman's explanation of his agreement with Sullivan, his behavior should be an unequivocal violation of conflict of interest laws. Under no conditions should an official with Kussman's authority be allowed to receive any money from any firm doing business with the BBC and over which he is in a position to exercise power.

J.A. Sullivan's cash generation checks, for instance those charged to Salem State Engineering Services, like the October 10, 1973 check, evidently intended for Fred Kussman, remain a further mystery. What makes the purpose of this generation more unresolvable is that the crucial records for some of these checks -- the cash disbursements journals -- are simply missing from the J.A. Sullivan Corporation files. Specifically, records for all of March 1974, May through December 1974, and January through May 1975, are all noticeably absent; destroyed, according to John Sullivan's testimony, during a relocation of offices within the company's building:

I do remember we moved from one building to another and after we got a decision from the Internal Revenue [they were audited] that there was no change to our filing, I felt as if the records weren't needed anymore. I do remember throwing some boxes away that had bank checks in them ... I remember we were working from moving from the smaller building that was in back of us to the main building and these boxes were sitting on the floor. I went through them and I said we don't need them anymore because we had just been audited, so out they went."¹¹³

This was the period when checks #9044 for \$1,000, #10570 for \$1,000, and #11137 for \$3,500 were issued. Summing up the company's accounting system, John Sullivan admitted in testimony before the Special Commission that the corporate books reflected, "what you [JAS] wanted them to reflect, but did not necessarily reflect what you [JAS] in fact, did with the money."¹¹⁴

Clearly, J.A. Sullivan's past interaction with the Commonwealth demonstrates the need for several of the reforms proposed by the Commission and enacted by the legislature. For instance, prospective general bidders must now file, with the

*Begun in July 1974, the Mt. Wachusett project was to have been completed in January 1976. It did not receive the BBC's Final Acceptance until August 1978.

awarding authority, both an application bid on the particular project and a prequalification statement. The latter will contain general information about the bidder's form of business organization, key personnel, construction experience and financial status. The criteria on which the bidders are to be rated and ultimately selected will include their record of performance on prior projects and their financial ability to undertake the job; by contrast, general contracts were previously awarded almost solely on the basis of the lowest bid price.

Firms receiving building construction or design contracts in Massachusetts must also maintain all records reflecting the transactions of the firm for six years after the final payment under the contract. These records are to be reviewable by the state agencies with principal responsibility for reviewing the contract work performed. Any person making a false entry, or who omits a true entry in these records will be subject to criminal penalties. If a contract exceeds \$100,000, a statement of management should be filed by the contracting company indicating that the company employs a system of internal management control to assure that entries made in the corporate records accurately reflect the transactions described.

The Commission's legislation also provides for the debarment of contractors. Any criminal or noncriminal activities that reflect upon a contractor's business integrity or responsibility as a public contractor will be bases for excluding that contractor from future work with the Commonwealth. Specifically, any transgression, such as poor contract performance or fraudulent record keeping, may be considered cause for debarment.*

*For further details, see Systems Report, Volume 8 : "Contractor Qualifications" and "Record Keeping."

INTRODUCTION

How does a master political fundraiser operate? What devices does he use to conceal the names of big contributors who want to remain anonymous, to divert cash contributions so that they never show up in any account, to appear to satisfy reporting requirements for illegal donations? When he uses his massive political clout to sell lucrative state contracts in exchange for "political contributions," what does he do when those cash contributions, far larger than legal limits, violate statutory bans on corporate contributions, and must be untraceable to their source?

The Special Commission wanted to know the answers to those questions, especially after it heard evidence that all the foregoing practices were connected with the award of state design contracts. The case which brought the Commission's questions most sharply into focus was the contract to design a new campus for Holyoke Community College. What follows is an account of the Commission's efforts to learn the details of improper campaign fundraising practices, the nuts and bolts of a sophisticated laundering operation for the proceeds of bribery and illegal campaign contributions.

The DMJM Story

In the spring of 1980, hearings were held before the Special Commission which revealed widespread corruption in the award of state design contracts. William and Frank Masiello, principals in the Worcester architectural firm of Masiello & Associates, a firm which served as a consultant on the Holyoke Community College contract, gave testimony that the Los Angeles based architectural firm of Daniel, Mann, Johnson, Mendenhall (known as "DMJM") used the Masiello brothers as conduits to bribe chief state Republican party fundraiser Albert P. "Toots" Manzi. The quid pro quo for this bribe (of over \$30,000) was a design contract worth almost \$2 million in architectural fees, awarded by the Commonwealth to DMJM on July 9, 1968.

The first payment to Manzi was made in late April 1969, according to the testimony of both Masiellos. A DMJM corporate check for \$5,000 was made payable to Frank Masiello. He arranged to have his brother William cash the check and deliver the proceeds to Manzi.¹

Frank Masiello testified to a second payment in late September or early October, 1970. This transfer occurred when, according to Masiello, DMJM corporate officer Barry Mountain visited the Worcester offices of Masiello &

Associates. In Mountain's briefcase was \$6,000 worth of \$5 bills, which Masiello and Mountain turned over to Manzi that same day at Manzi's supermarket in Worcester.²

William Masiello further testified that he was present at two separate meetings held in a Boston hotel between Toots Manzi and Barry Mountain. The first meeting took place on July 12, 1971 at the Sonesta Hotel, Logan Airport.³ It appears that at this meeting three sequentially numbered Crocker-Citizens National Bank cashier's checks made payable to The Sargent Reception Committee, purchased on June 28, 1971, in the amounts of \$2,000, \$1,500 and \$1,500, were given to Manzi by Mountain. The Commission found that these checks had been deposited into the Sargent Reception account on September 14, 1971.

A second meeting between Manzi and Mountain at which William Masiello was present occurred on January 17, 1972 at the Logan Hilton Hotel (which had on January 2, 1972 changed its name from Sonesta). At this meeting, Masiello testified, he saw Mountain give Manzi a sealed envelope. The next day, according to Masiello, he met with Manzi, and Manzi showed him five \$3,000 cashier's checks which he said had been given to him by Mountain. On March 30, 1972, two sequentially numbered Bank of California cashier's checks for \$3,000, made payable to the Sargent Testimonial Committee, purchased on January 11, 1972, were deposited into the Sargent Reception Committee account. It is likely that these checks were among the ones given to Manzi by Mountain at the second meeting at the Logan Hilton on January 17, 1972.⁴

How was the Commission to test the evidence given by the Masiellos? Manzi was summoned to testify, but fought the summons on medical grounds. Ultimately, the courts ordered him to appear but he declined to testify, citing his constitutional privileges against self-incrimination.⁵

What the Commission Found in Manzi's Bank Account

At this point, with information provided by the Masiello brothers concerning payments from DMJM to Manzi, the Commission decided to summon the bank records of a major fundraising event for Governor Francis W. Sargent run by Toots Manzi around the time of the meetings between Manzi and Mountain. The fundraiser was held on May 21, 1972 at the Pleasant Valley Country Club in Sutton. The proceeds were maintained by Manzi in an account at the Guaranty Bank & Trust Company in Worcester. The Commission's scrutiny of this bank account and its analysis of campaign records provided by the Sargent Committee disclosed the following:

(1) Seven deposited cashier's checks from California banks (three made payable to The Sargent Reception Committee and four made payable to The Sargent

Testimonial Committee), including one for \$2,000 whose remitter line contained the name of a person who was a DMJM employee at the time

(2) That the dates of purchase of the cashier's checks corresponded closely with the times of the payments by Mountain to Manzi, as testified to by the Masiellos.

(3) The false reporting of contributors' names to cover, on official campaign reports, the deposits of the California cashier's checks.

(4) Subsequent testimony of persons listed as making contributions deposited on the same dates as the California cashier's checks, who testified either that they gave cash or that they made no contribution at all.

(5) That only \$85 in cash was deposited throughout the life of the account-- despite testimony of cash donations amounting to at least \$4,500.

In sum, the Commission's investigation of this fund raising account at the Guaranty Bank revealed not only its use as a conduit for laundering illegal campaign contributions, but diversion of cash contributions and resulting falsification of campaign finance records.

How the Commission Found What It Was Looking For

This account will also describe the investigative procedures followed in discovering the California cashier's checks and in uncovering an almost undetectable scheme to launder these checks through the banking system and the procedures required by law for reporting political contributions.

Several conditions hampered the Commission's efforts to conduct this investigation. Foremost was Manzi's refusal to answer questions, leading the Commission to turn to bank accounts and financial transactions as the primary sources of evidence. Investigating past events by means of bank records is difficult because records are routinely destroyed under standard bank procedure --in fact, most banks destroy microfilm deposit records after six years. It is therefore unusual (and fortunate) that records of bank transactions which occurred more than six years ago were found in this investigation.

Since the Commission's investigation concentrated on events which happened almost ten years ago, its investigators soon discovered that certain microfilm which contained Sargent Reception Committee information was of very poor quality. In addition, the cataloging of the microfilm was in a few instances incorrectly performed.

A prime example of this type of error was a Bank of California cashier's check for \$2,000, #5400812, purchased 3/2/72, deposited 5/2/72. According to the bank's research catalogue, this check was supposed to be on microfilm A2322. Upon research of this film, which contains hundreds of checks deposited in any

account of the over twenty branches of the Guaranty Bank & Trust Company for that day, May 2, 1972, the check sought could not be found.

The investigator assigned to the case read through every check in the previous numbered film, A2321, in search of the deposited item. Through the perseverance of the investigator, the deposited check was found on this film. The discovery was of major importance, for the check contained in its remitter line the name Lee Jenson, who was identified by the Commission's staff as assistant to the controller of DMJM from 1971 to 1976.

PROCEDURES FOR THE COMMISSION'S AUDIT . . .

Guaranty Bank & Trust Company Accounts 4-336-7011 and 4-338-1359

The Guaranty Bank & Trust Company account is unique in several respects. It is the only Sargent/Dwight campaign account with complete bank records which were available to the Commission. It was an account distinct from the main Sargent Committee account, and it was controlled by one man--Albert "Toots" Manzi.

Sargent Reception Committee Account No. 4-336-7011 was opened at the Guaranty Bank & Trust Company on April 12, 1971, over a year prior to the Sargent Reception Committee dinner at the Pleasant Valley Country Club, with an initial deposit of \$3,100. On June 23, 1971 this account was closed when the original deposit amount of \$3,100 was transferred into a newly established Sargent Reception Committee Account No. 4-338-1359, at the same bank. Paul A. Hogan, Sargent Reception Committee Treasurer, and C. Walter Bergstrom, an authorized signator on the depositor's card, closed the second account on August 14, 1972 after making a \$550 withdrawal.⁶

During the 14-month life of the account, 30 deposits were made totalling \$140,550. Individual contributions, by check of \$1,000 or more, accounted for \$57,825 of the total contributions deposited. There were two withdrawals from the account.⁷ In addition to the withdrawal which closed the account, \$140,000 was transferred from the account on June 6, 1972, in the form of a check payable to the Sargent Committee, 21 Beacon Street, Boston.⁸

Remarkably, given the duration of the account, the amount which was deposited to it, and the fact that individual contributions in the form of cash up to the amount of \$3,000 were legal at that time, only \$85 in cash was actually deposited into this account: \$15 was deposited on December 23, 1971, and \$70 on May 31, 1972.⁹ The small amount of cash deposited became quite significant after several witnesses testified before the Commission that they had given substantial amounts in cash to Toots Manzi as donations to the Sargent Reception Committee dinner.¹⁰

Bank Procedures Followed in Retrieving Information

All the account information summarized herein was obtained from a review and analysis of Guaranty Bank & Trust Company microfilm records obtained through Commission summonses. The following is a brief outline of what was done by the Commission in obtaining and analyzing Guaranty Bank & Trust Company records.

(1) Staff first obtained copies of the account's monthly bank statements from microfilm.

(2) For each date of deposit listed on these bank statements, "post-run" film was obtained. Post-run film is microfilm regularly maintained by the bank which lists batch numbers given to each deposit. (All deposits made on a certain day are organized into batches or groups of from 20 to 68 deposits, and these batches or groups are assigned batch numbers.)

(3) The PM reconciliation for dates of deposit was then examined. The PM reconciliation is an internal bank control procedure applied daily which records and balances all transactions for the day against all bank accounts. This reconciliation is also organized by batch numbers assigned from the post run, and states in code for each deposit in a batch the following data: (a) total deposit amount, (b) cash portion (if any) of deposits, (c) item-by-item breakdown of each check or cash amount included in the deposit, (d) the bank transit number of the bank upon which each check included in the deposit is drawn, (e) the check number of each deposited item which is a bank cashier's check or registered check, or, alternatively, for each personal check the number of the account upon which the check is drawn. The Commission's staff used this information for two purposes: (i) It identified all individual items in the amount of \$1,000 or more deposited in the Sargent Reception Committee account. (ii) Later, after discovering cashier's checks drawn upon California banks deposited to this account, it determined all items deposited into the account on the same dates as the California cashier's checks.

(4) The PM reconciliation also lists the number of the pocket in which each deposited item has been placed. (A "pocket" number is individually assigned to each deposited item based upon the correspondent bank which honors that check.) The pocket number enables one to identify the bank which honored the check. All checks are listed in a daily log organized by the bank which honored the check. This log identified the microfilm roll on which a copy of the deposited item may be found. Appendix Exhibit 1 is a sample PM reconciliation statement which includes deposits made to the Sargent Reception Committee Guaranty Bank & Trust Company account on September 14, 1971.

OTHER SOURCES OF INFORMATION

Sargent Reception Committee Treasurer Paul A. Hogan's Role Under Manzi

Although the authorized signatures for both Sargent Reception Committee accounts were those of Paul A. Hogan and C. Walter Bergstrom, evidence before the Commission showed that Toots Manzi exercised effective control over deposits made into the account and over the names listed as contributors. Hogan testified before the commission that he made all the deposits into the Sargent Reception Committee account, and that he submitted the lists of contributors filed with the Secretary of the Commonwealth. In every case, he said, his actions were ministerial duties performed at the direction of Manzi. Hogan said that he did not do any fundraising for the Sargent Reception Committee dinner.¹¹

Hogan described what he did as follows: Manzi telephoned him when he had sufficient contributions to warrant a deposit. Hogan then met with Manzi, usually at an office Manzi used at his brother's (Arthur J. Manzi) insurance agency on Main Street in Worcester. At these meetings Manzi handed Hogan the checks or cash to be deposited and Hogan initialled some receipt for each check he received. Manzi also provided Hogan with a list of names and addresses of contributors in preparation of a deposit to be made. Manzi referred to a looseleaf notebook while writing the lists. Specifically, if the deposit included cashier's checks, Manzi provided a name or list of names to be credited for that contribution.

Hogan did not question Manzi about any of the names he supplied, nor did he compare those names to the purported corresponding contribution or name on the face of the check. In other words, when the California cashier's checks were deposited Hogan did not seek clarification from Manzi as to how Worcester area people were credited with these contributions, nor did he question the discrepancy between the amounts of each of the seven cashier's checks and the amounts that contributors were credited with.

My duties in that position were to simply pick up the checks or cash, whichever the case may be from Manzi. I'd take them to my home, make up the deposit, make up the forms for the Secretary of State's office by which you would list the bank number and the check, the amounts, the names of the contributors in alphabetical order. There was a lot of detailed work.¹²

Hogan said that he in effect adopted Manzi's statements in the campaign contribution documents that he filed with the Secretary of State's office.¹³

By law, the Secretary of the Commonwealth, and now the Office of Campaign and Political Finance, must retain records of contributions made to a candidate for public office only until the next election.¹⁴ The State Secretary's office has

thus destroyed those records for Governor Sargent's fundraising activities in 1971 and 1972. Nor did Governor Sargent, through the Sargent Committee or any other committee with fundraising responsibilities, have any copies of these records.¹⁵

Sargent Committee Records

The Sargent Committee, however, did regularly maintain a set of index cards (organized alphabetically by contributor, and also by county) which listed the name and address of the contributor, the date the contribution was deposited, the amount of the contribution and, occasionally, other information about the contributor. These cards were prepared from the candidate's statement of campaign contributions filed with the Secretary of the Commonwealth and, therefore, were expected to reflect the same information entered on those official statements.¹⁶ These records were made available to the Commission in March, 1980 by the Sargent Committee.

Boston Globe Article

In addition, on July 21, 1972, The Boston Globe published an article listing, by name and city or town, all individuals formally reported to have contributed \$500 or more to the Sargent Reception Committee Pleasant Valley Country Club dinner (hereafter called the "Boston Globe article"). The names and addresses reported in the Boston Globe article were obtained from the candidate's report filed with the State Secretary by Governor Sargent.¹⁷ Using the Sargent Committee's index cards and the Boston Globe article, the Commission's staff was able to reconstruct substantially what was reported by the Sargent Reception Committee, and then to compare it with what bank records showed concerning contributions actually deposited. The Commission attempted this reconstruction only for those four dates on which it found that cashier's checks drawn upon California banks had been deposited into the Guaranty Bank & Trust Company account.¹⁸

The Commission obtained microfilm copies from the Guaranty Bank & Trust Company of all checks deposited into the Sargent Reception Committee account on September 14, 1971, February 7, 1972, March 30, 1972 and May 2, 1972. These checks and the bank's records of the transactions throughout the life of the account were compared with the Sargent Committee contributor records and with the Boston Globe article, presenting a substantial consistent picture.

The filing with the Secretary of the Commonwealth indicates, according to the Boston Globe article, that the Pleasant Valley Country Club dinner raised \$140,000. The bank account records reflect total deposits of \$140,550. While it

is possible that individual contributions listed in the Sargent Committee index cards may have been made for a purpose unrelated to the Pleasant Valley Country Club dinner, that possibility is dispelled by comparing the cards with the Boston Globe article, which shows that the same names and amounts were submitted to the State Secretary's office as having contributed to the Pleasant Valley affair.¹⁹

FINDINGS OF THE COMMISSION'S AUDIT

Thus, the Sargent Committee records, read in conjunction with The Boston Globe article, appeared to reflect substantially what was declared formally in 1972 concerning contributions made to the Sargent Reception Committee. The Commission then summoned a number of individuals who were listed in the Sargent Committee files as having made contributions which were deposited on one of the above four dates, but for whom a corresponding check deposit could not be found in the Guaranty Bank records.

These witnesses without exception either denied making any contribution at all or admitted making a contribution in cash. But that cash, as the Commission had found, was never deposited into the Sargent Reception Committee account. Not one of these witnesses (all of whom were Massachusetts residents in 1972) made a campaign contribution at any time in the form of a cashier's check drawn upon a California bank.

Tracing The California-Cashier's Checks

The Commission's review of the Guaranty Bank & Trust Company records disclosed that on four different dates a total of seven cashier's checks drawn on two California banks were deposited into the Sargent Reception Committee account. The Commission then sought to determine who had purchased the checks before they entered the Sargent Reception Committee contribution sequence (Manzi to Hogan to the Guaranty Bank & Trust Company).

The answer appeared self-evident in the case of one check (number 5400182), issued on March 2, 1972 in the amount of \$2,000 by the Bank of California. The purchaser named on the remitter line of the check is Lee Jenson.* After identifying Jenson (in a telephone conversation with him on 4/30/80) as assistant to the Controller of DMJM during 1971-1972, the Commission was unable to question him further,²⁰ or to question any other DMJM employees. DMJM's attorneys requested that the Commission direct all its inquiries to them,²¹ and refused to make their clients available to the Commission for interviews or testimony.

In the cases of the other checks, the Commission was unable to obtain purchase or other records from the Bank of California or from the Crocker-Citizens National Bank without a summons. The Commission also was unable

to question any principal of DMJM about these checks or other matters because they also were beyond the scope of the Commission's summons power and declined the Commission's invitation to appear and testify voluntarily.

The Commission then examined the Sargent Committee files to determine who purportedly made contributions on the four dates previously mentioned. Many of these contributors on record were successfully summoned to testify before the Commission. All who testified denied making any contributions in the form of California cashier's checks. The following is a summary, organized by date of deposit, of the evidence concerning each of the California checks deposited into the Sargent Reception Committee account.

California Cashier's Checks Deposited on September 14, 1971

Three sequentially numbered checks²² issued by the Crocker-Citizens National Bank, Los Angeles, California were deposited into the Sargent Reception Committee account on September 14, 1971. These checks, in the amounts of \$2,000, \$1,500, and \$1,500, totalled \$5,000. They were all purchased on June 28, 1971.

Sargent Reception Committee Deposit on September 14, 1971

The Sargent Committee contributor files indicate that the following contributions were deposited on September 14, 1971:²⁴ Edmund DelPrete, \$1,000; Anthony N. Tomasiello, \$1,000; Arthur J. Manzi, \$1,000; Charles W. Robinson, \$500; Edward Sykes, \$500; Maurice A. Berry, \$250; Anthony Penney, \$200; David Ames, \$200. Only one of the contributions reflected in the Sargent Committee files--Maurice Berry's \$250 contribution--is supported by a corresponding deposit to the Sargent Reception Committee account.²⁵ No cash was deposited that day to the account, which negates the possibility of a cash deposit corresponding to any reported contribution. The five contributors who donated \$500 or more, according to Sargent Committee files, are also listed in the Boston Globe article as contributors to the Sargent Reception Committee dinner.

Contributors

Of the contributors listed in the Sargent Committee records, Edmund DelPrete, Anthony Tomasiello, Charles Robinson, and Arthur Penney appeared and testified before the Commission. Arthur Manzi, brother of Albert Manzi, refused to

* However, the name of Raymond Lee Jensen, who is also known as Lee Jensen, is spelled incorrectly on this check (spelled Jenson). This implies that Jensen did not purchase the check. Jensen, in communication with Commission staff, denied ever purchasing such a check. The numbers preceding the typed-in amount to be paid contain the digits 314, which is a bank code indicating that the checks were purchased at the Crocker National Bank branch located, in June, 1971, at 3265 Wilshire Boulevard, Los Angeles.²³ That was in close proximity to DMJM's offices, which at that time were at 3325 Wilshire Boulevard, Los Angeles.

testify.²⁶ The other four denied making any contribution in the form of a California cashier's check.²⁷ In addition, none of the amounts listed as contributions in the Sargent Committee files for 9/14/71 correspond to the amounts of any one of the three California cashier's checks actually deposited.

Anthony Tomasiello, who now is the clerk-magistrate of the Third District Court of Southern Worcester, was in 1971 and 1972 an assistant clerk of the Worcester Superior Court. Tomasiello testified that he contributed \$1,000 to the Sargent Reception Committee. He gave the money in cash to Albert Manzi in February or March, 1971. Tomasiello produced a \$1,000 check dated February 23, 1971, drawn upon a trustee account in his name which he used as a personal checking account.²⁸ He stated that his wife cashed the check, and that shortly after the check was cashed he took the proceeds and gave them to Manzi.²⁹ Since only \$85 in cash was ever deposited into the Sargent Reception Committee account, it is clear that this \$1,000 cash contribution did not go into the account. Instead, Tomasiello was listed as contributing \$1,000 much later, in September, 1971, and in the form of a California cashier's check. Tomasiello denied making any contribution in such a form.³⁰ Edmund DelPrete, an administrator at the Elm Manor Nursing Home in Rockland, was another one of the reported \$1,000 contributors who appeared before the Commission. DelPrete denied ever making any contribution in the amount of \$1,000, or any contribution in the form of a cashier's check drawn upon a California bank.³¹ He testified that the only contribution he made was a small cash contribution--less than \$300--which he gave to Victor Zuchero, executive director of the Sargent Committee. DelPrete was unaware that his name had been used as a purported contributor of \$1,000, and stated that he did not know Albert Manzi.³²

Charles W. Robinson, who is now retired and living in Palm Harbor, Florida, also testified before the Commission that he made no contribution to the Sargent Reception Committee in 1971 or 1972.³³ During 1971 and 1972 Robinson was a retail tire dealer whose business was located in Worcester. He had known Manzi for 35 years, was fully familiar with Manzi's role as a fundraiser, and frequently contributed to the Volpe, Sargent and Dwight campaigns. However, he testified that he did not make a contribution to the Sargent campaign during 1971 or 1972.³⁴

Anthony Penney stated to the Commission that he was a nursing home administrator who knew Manzi because he had dealt with him at his store in Worcester. Penney stated that he contributed \$200 in cash to the Sargent Reception Committee. In testimony which paralleled Tomasiello's, he described giving the money in cash to Manzi at his brother's insurance agency. Penney, however, denied making any contribution in the form of a check drawn upon a

California bank.³⁵

It is clear from the testimony of these witnesses that the cashier's checks deposited on September 14, 1971, cannot be explained as being made by the purported contributors listed in the Sargent Committee's files. In fact, it is reasonable to infer, from those witnesses who testified that they contributed cash, that their names were then used to authenticate the cashier's checks being deposited, which otherwise lacked the name of a contributor which could be disclosed. It appeared to the Commission that the cashier's checks were laundered through the account while the cash contributions were diverted by Toots Manzi.

Probable Source of the Cashier's Checks

There is other evidence, unrelated to the Sargent Committee files and the Guaranty Bank & Trust Company records, which suggests a possible source of the cashier's checks deposited on September 14, 1971. William Masiello testified to being present at a meeting on July 12, 1971, between Toots Manzi and Barry Mountain, a DMJM employee, at the Sonesta Hotel, Logan Airport.³⁶ Three Crocker-Citizens National Bank cashier's checks (deposited 9/14/71) were purchased two weeks earlier--on June 28, 1971--at a branch of the Crocker-Citizen's National Bank located in the same Wilshire Boulevard neighborhood as DMJM's main office. It is likely that these checks represented part or all of a payment made to Manzi by Mountain on July 12, 1971.³⁷

California Cashier's Check Deposited on February 7, 1972

One cashier's check issued by the Bank of California, National Association, was deposited into the Sargent Reception Committee account on February 7, 1972.³⁸ This check, in the amount of \$2,000, was issued on January 11, 1972, by the branch then located at 3250 Wilshire Boulevard, Los Angeles. (The digits "54" preceding the check number "00074" indicates the branch at which the check was purchased.)

The balance of the February 7 deposit consists of personal checks and one \$2,000 cashier's check issued by Worcester Federal Savings Bank. No cash was included in the deposit.

Sargent Reception Committee Deposit, February 7, 1972

The Sargent Committee files reflect twelve contributions deposited on February 7.³⁹ With the exception of a \$500 contribution attributed to Alfred Simoncini, and a \$1,000 contribution credited to Aubrey Batstone, the Sargent Committee file entries are corroborated by photocopies of the checks actually

deposited that day.⁴⁰ Both Batstone and Simoncini presented sworn testimony to the Commission.

Contributors

Simoncini, a senior insurance examiner with the Massachusetts Division of Insurance, submitted a sworn affidavit in lieu of testimony because he was outside the Commonwealth at the time he was requested to appear before the Commission.⁴¹ An active supporter of Governor Sargent during his campaigns, Simoncini was a member of the Worcester City Republican Committee from 1960 through 1974. He denied making the \$500 contribution deposited on February 7 which was credited to him. He did attend the Pleasant Valley Country Club dinner, using two free tickets given to him by Manzi. Simoncini also knew from the Boston Globe article that his name had been falsely used as a source of a \$500 contribution in papers filed with the Secretary of State, yet he did nothing to correct this listing.⁴²

Aubrey Batstone was also active in Worcester County Republican politics for many years, and had known Manzi for 40 years. Batstone testified that he never made a \$1,000 contribution in the form of a cashier's check issued by the Bank of California, and that any contribution which he may have made would probably have been in cash.⁴³ He also knew from kidding remarks by a friend that he had been falsely credited with contributing \$1,000 to the Pleasant Valley Country Club dinner.⁴⁴

As with the September 14, 1971 deposit, the California bank cashier's check deposited on February 7, 1972 did not come from the people formally declared to have made portions of that contribution. In this case, the names of politically active Republicans in Worcester County known to Manzi were used to conceal the source of the cashier's check deposited into the Sargent Reception Committee account.

California Cashier's Checks Deposited on March 30, 1972

The deposit made to the Guaranty Bank & Trust Company account on March 30, 1972 contained no cash. It was comprised entirely of checks and money orders, most of which leave no doubt as to the source of the contribution. The exceptions are two cashier's checks, each in the amount of \$3,000, issued by the Bank of California, N.A.⁴⁵ Both of these cashier's checks appear to have been purchased at the same time and place as the \$2,000 cashier's check deposited February 7, 1972. The three checks were purchased on the same day (January 11, 1972), the same branch bank (code "54"), and are sequentially numbered 00072, 00073 and 00074.

Sargent Reception Committee Deposit on March 30, 1972

Sargent Committee files reflect 20 contributions deposited on March 30, 1972.⁴⁶ Eleven of these are confirmed by corresponding check deposits. Of the seven (out of these 20) contributions that are for amounts of \$1,000 or more, only one is corroborated by a corresponding check deposit.⁴⁷ Of the remaining six, four were clearly contributions to the Sargent Reception Committee dinner because the names of these contributors appear in the Boston Globe article. These four contributors--Donald Smith, \$1,000; Robert Lotuff, \$1,000; Irving Bello, \$1,000; and Robert Krupa \$1,000--denied making the contributions credited to them.

Contributors

Donald Smith testified that he was chairman of the Leicester Republican Town Committee for 20 years. He knew Manzi because of his political activity. Smith stated that he gave Manzi \$475 in cash and a \$100 personal check as contributions to the Sargent Reception Committee 1972 dinner. None of these contributions were in the form of a cashier's check drawn upon a California bank.⁴⁸ Instead, Manzi requested and received Smith's permission to attribute contributions made by others to Smith's "table" (tables for this event cost \$1,000).

Q. Would you describe for us what was said during that conversation?

A. Mr. Manzi called me and told me I had come close to selling a table and he had sold two or three tickets to people that didn't want names used and he said can I bill them to your table and I said sure.⁴⁹

Irving Bello, a partner in Bello Jacobs Associates (manufacturer's representatives) and an officer, with former Governor Sargent, of Natural Resource Corporation, testified that he bought a table at the 1972 Pleasant Valley Country Club dinner for \$1,000. Although he could not remember to whom he gave the \$1,000, Bello was emphatic in his memory that the tickets were purchased on the spur of the moment and in cash.

Q. Can you describe for us the circumstances under which you made this particular thousand dollar contribution in cash?

A. I think I can. One day either at Pleasant Valley where I would go very, very often we were sitting around a table after people were playing golf and there was a number of people around it, and somebody said to me, hey, cheap s.o.b. Your partner bought a table, and I in turn just turned around and said well, if my partner could do it I could do it and that was it. That is to the best of my recollection.

Q. Can you tell us who was with you at this table when all this happened?

A. I really don't remember the people, but I

wouldn't know who was there at that particular day. If I recall -- I really don't know who was there that day.

Q. You say you took a thousand dollars out of your pocket and gave it to someone? Is that how it happened?

A. Well, let me give you a little bit of my background. When I was growing up I was a fruit peddler and in my business in those days you used to always carry a lot of money, and even today one of the gimmicks of my business because I am a salesman is to have something you are unique for, and one my things is always to have a lot of money, have it in an elastic band I just make emphasis of that and I have been for years. So, that is how I happened to have a lot of money. Now, whether I bought it all at one time or not, I really don't remember if I bought all day, that I bought a few one day and a few the next day, I don't know, I really don't remember.

Q. Are you certain that you did pay for the tickets in cash?

A. Absolutely.⁵⁰

Bello did not use a cashier's check issued by a California bank to make his contribution.

Robert Lotuff, a Ware businessman, grew up on Shrewsbury Street in Worcester where Manzi's Market was located. He recalled giving cash--approximately \$500-- to "Cuzzy" Mingolla, the owner of the Pleasant Valley Country Club, as a contribution to the Sargent Reception Committee dinner. Lotuff denied making the \$1,000 contribution credited to him on March 30, 1972, and remembered being surprised in 1972 when a friend told him that his name was printed in the newspaper as a \$1,000 contributor.⁵¹

Robert Krupa, of Meriden, Connecticut, is the brother-in-law of M. Joseph Stacey, who was Comptroller of the Commonwealth from 1966 to 1973. Stacey testified before the Commission that from 1968 to 1972 he commuted with Manzi regularly once or twice a week from Worcester to Boston. On more than one occasion during those trips Manzi asked Stacey for names, particularly out-of-state names, because "he had a lot of contributors that didn't care to use their own names."⁵² Although Stacey refused to give Manzi names when so requested in 1972, he admitted that at an earlier time, in 1970, he may have given Manzi the names of his daughter, Marlene S. Marcus (then a resident of New Jersey), and of his brother-in-law, Robert Krupa (a resident of Connecticut).⁵³ Stacey stated vehemently that neither his daughter nor brother-in-law Krupa contributed a penny to the Sargent Reception Committee.⁵⁴

After he saw that his relatives' names were listed as contributors in the newspaper in 1972, Stacey talked to Manzi about it:

I said who authorized you to use those two names connected with me and relatives of mine. He said it didn't make any difference, they're from out of state, nobody worries about that. I said well, you have no authority to use those names.⁵⁵

Although he knew that the campaign contribution information filed with respect to his daughter and brother-in-law were deliberately false, Stacey did nothing to correct this report despite the fact that he was Comptroller of the Commonwealth. Stacey did nothing because he feared that Manzi, whom Stacey had heard described by Governor Sargent as the king of Worcester County, would cause him to lose his job as state Comptroller.

Well, let me state to you my position. My term as comptroller expired in January, 1971. I testified that I was under strain as far as Toots Manzi was concerned, that there was a strained relationship between us. When I mentioned that, that he used these names without authority, he said this was not the final newspaper story, and he said it may be corrected, but you haven't been reappointed comptroller of the Commonwealth. It came to fruition in February of 1973 that I was removed as comptroller of the Commonwealth and transferred to the Tax Department at a salary cut of \$7,000.00.

I was made an associate commissioner.

MR. FORBES: And when we just spoke a few moments ago I believe that you stated that Mr. Manzi had said to you in effect do you want to lose your job?

THE WITNESS: He said you don't know the position you're in, you haven't been appointed to comptroller. Anything could happen which meant to me that I may lose my job.⁵⁶

It is clear, therefore, that Krupa, Bello, Smith and Lotuff did not contribute the \$6,000 in cashier's checks deposited into the Sargent Committee account on March 30, 1972. Instead, other evidence suggests that the DMJM design firm transferred those checks to Manzi. The two \$3,000 checks were purchased on January 11, 1972, at the Bank of California branch office located in the same building as DMJM's main office.⁵⁷ William Masiello testified before the Commission that on January 17, 1972, at a room in the Logan Hilton, DMJM employee Barry Mountain handed Manzi an envelope containing a payment for the Holyoke Community College contract. Manzi later showed Masiello the contents of the envelope--five \$3,000 cashier's checks or treasurer's checks--and complained about getting checks instead of cash, and about not getting any names to list as the contributors of the checks.⁵⁸ It would be reasonable to infer that the two \$3,000 checks deposited in the Guaranty Bank & Trust Company account were part of the Logan Hilton payment to Manzi.⁵⁹

May 2, 1972 Deposit

Two deposits were made to the Sargent Reception Committee account on May 2, 1972. One consisted of 30 personal checks or money orders. The other was a cashier's check for \$2,000 issued by the Bank of California. No cash was included in the deposits.

The cashier's check, in the amount of \$2,000, was issued on March 2, 1972 by the same branch which issued the other Bank of California checks deposited into the Sargent Reception Committee account.⁶⁰ This check has the name Lee Jenson entered on the remitter, or purchaser, line of the check.

An analysis of the Sargent Committee files and the Boston Globe article did not uncover the name of Lee Jenson (or Jensen) listed as a contributor. Other investigation by Commission staff, however, determined that DMJM employed Raymond Lee Jensen as an assistant to the controller during 1971 and 1972.⁶¹

Contributors

Thirtv-nine contributions were deposited on May 2, 1972, according to Sargent Committee files.⁶² Most of the contributions are in amounts of \$100 and \$200. There is only one listed contribution which is not corroborated by a deposited personal check and which is also large enough (\$500) to be included in the Boston Globe article as a contribution declared to have been deposited in the Sargent Reception Committee account.⁶³ Thus, the number and small amounts of the purported contributions made it impractical to reconstruct through testimony amounts which declared contributors actually gave.

Such a reconstruction was not necessary to determine that this \$2,000 cashier's check contribution was improperly credited. The Sargent Committee files did not reflect any \$2,000 contribution which might correspond to the deposited check, nor was Lee Jenson listed as a contributor in either the Sargent Committee files or in the Boston Globe article.⁶⁴

Other Unidentified Contributions

In the course of its review of the Guaranty Bank & Trust Company records, the Commission's staff obtained a microfilm copy of every item in the amount of \$1,000 or more deposited into the Sargent Reception Committee account. Several of these deposited items were cashier's checks in addition to those from California which did not indicate on their face who made the contribution.

Unidentified Cashier's Checks

There were other instances found in the Commission's investigation of the Sargent Reception Committee Account where the contributor of cashier's checks in

amounts of from \$1,000 to \$2,500 could not be identified from the face of the check, nor were any individuals credited on Sargent Committee Records as contributors of these checks:

A Guaranty Bank & Trust Company treasurer's check, #01060327, was issued April 3, 1972, in the amount of \$1,000, payable to the "Francis W. Sargent Reception." It was deposited into the Sargent Reception Committee account on April 11, 1972.⁶⁵

A Blackstone Valley National Bank cashier's check, #0044681, was issued May 22, 1972 in the amount of \$2,500, payable to "Governor Sargent's Testimonial." It was deposited into the Sargent Committee account on May 31, 1972.⁶⁶

A State Bank of Albany cashier's check, #01053400, was issued May 11, 1972, in the amount of \$1,000, payable to "Sargent Dinner Committee." It was deposited into the Sargent Reception Committee account on June 2, 1972.⁶⁷

A Worcester County National Bank cashier's check, #385794, was issued May 18, 1972, in the amount of \$1,200, payable to "Governor Sargent Reception Committee." It was deposited in the Sargent Reception Committee account on May 22, 1972.⁶⁸

Commission staff reviewed the Sargent Committee's index cards to determine whether any contribution was recorded therein in the amounts of any of these checks for the dates on which they were deposited. No such contributions were found. Therefore the mystery remains as to who the actual contributors were.

Two other cashier's checks which did not indicate the purchaser were also deposited into the Sargent Reception Committee account. These checks were sequentially numbered, and were purchased at the Neponset Circle branch⁶⁹ of the New England Merchants National Bank:

New England Merchants National Bank cashier's check #621676, was issued on February 28, 1972, in the amount of \$2,500, payable to "Governor Sargent's Reception Comm." It was deposited into the Sargent Reception Committee account on March 14, 1972.

New England Merchants National Bank cashier's check #621677, was issued on February 28, 1972, in the amount of \$2,500, payable to "Gov. Sargent's Reception Comm." It was deposited into the Sargent Reception Committee account on March 14, 1972.⁷⁰

A search of the Sargent Committee files revealed that a Martha Hoffman was listed as making a \$2,500 contribution on March 14, 1972.⁷¹ The Boston Globe article also listed her as a \$2,500 contributor.⁷²

Martha Hoffman died in February, 1979, while a resident of Norumbega Apartments, a low-income elderly housing complex located in Newton. Francis J. Quinn, Director of Newton Housing Services (which oversees the operation

of Norumbega Apartments), testified before the Commission, providing details of Martha Hoffman's living accommodations and financial resources in 1972. This testimony was based upon the Housing Services Department records concerning Hoffman.⁷³

Hoffman first moved into public housing in April, 1971. Previously, she had been a housekeeper for Gladys Minkin, 125 Greenwood Street, Newton, for seven years. On her written application for admission to public housing in 1971 Hoffman stated under penalties of perjury that her annual income was \$3,600 a year, consisting of \$2,800 a year in earnings, \$200 a year in interest, and \$600 a year in social security benefits. Her assets were \$4,000. Hoffman's financial status was reviewed again in August, 1973. Her annual income then was approximately \$2,500.

During the time that Hoffman lived in public housing she occupied a one bedroom apartment which was the smallest unit available at the complex. Her monthly rent in April 1971 was \$54; the rent was increased to \$70 a month effective September 1973.⁷⁴

These facts recounted by Quinn make Hoffman an unlikely contributor, in 1972, of \$2,500. Further investigation by Commission staff revealed that Gladys S. Minkin and Dr. Isadore Minkin, who reside at 125 Greenwood Street, Newton (the address given by Hoffman as her prior residence as live-in housekeeper), were authorized signators for a Quincy Nursing Home, Inc. checking account maintained in 1972 at the Neponset Circle branch of the New England Merchants Bank.⁷⁵ Dr. Minkin appeared at a private hearing of the Commission, but refused to respond to questions concerning the \$2,500 check contributions and Martha Hoffman by exercising his privilege against self-incrimination.

Undeposited Cash Contributions

There is other evidence concerning the use of false contributor names and of the making of cash contributions which were never deposited into the Sargent Reception Committee account. Stacey, in his testimony before the Commission, identified Marlene S. Marcus and Henry Johnson as other people whose names were falsely listed as contributors.⁷⁶ Jerome Jacobs, a businessman who is now an officer and director with former Governor Sargent of Natural Resource Corporation, testified that he gave \$1,000 in cash to "Cuzzy" Mingolla to buy a table at the Sargent Reception Committee dinner.⁷⁷ Frank M. Driscoll stated in an interview with Commission staff that he paid Manzi \$1,000 in cash for tickets to the 1972 Sargent dinner at the Pleasant Valley Country Club.⁷⁸

In short, the Commission found evidence of thousands of dollars of cash contributions to Manzi for this affair which were never deposited to the account.

Charles W. Robinson described in his testimony one occasion in which his name was used falsely as a contributor. Robinson permitted his name to be used by the law partner of John Melican (now a judge) as the purported contributor of \$500.

Q. Now, sir, was there ever any occasion when someone asked you to allow them to use your name as a contributor that was being made by this other person?

A. Yes. That was done back when John Volpe was Governor and my attorney, Samuel Berman, wanted to contribute \$500 to Mr. Manzi to help his law partner receive a judgeship, and he asked if he could put it in my name. I said sure, go ahead, so he did.⁷⁹

Robinson also took a young man seeking a pardon to meet with Manzi in 1974 and made a \$500 cash "contribution":

Q. Was there any exception to that, any event in 1974 where you did not follow that practice?

A. Yes. There was one exception.

Q. Would you describe for us that particular exception?

A. Well, I had a fellow who was looking for a Governor's pardon. He was Administrative Assistant to Sheriff Smith in Worcester. The Sheriff and I discussed it, and he wanted me to talk to Toots Manzi who had some influence with the Governor to see if he could get him a Governor's pardon. We went over and I gave Toots Manzi \$500 in cash which was later repaid to me by this kid who was after the Governor's pardon.⁸⁰

CONCLUSION

To highlight the findings of the Commission's investigation of the Sargent Reception Committee account, a number of individuals were credited with having made substantial campaign contributions which were deposited at the Guaranty Bank & Trust Company on the same date as large California cashier's checks. Documentary evidence suggests that these checks originated with the California design firm of Daniel, Mann, Johnson, Mendenhall (DMJM). Testimony from individuals actually credited with making the contributions showed that their names were falsely reported. This evidence, in conjunction with the knowledge that the account was controlled by Albert "Toots" Manzi, strongly indicates that the deposits made into the campaign account came from DMJM in exchange for the award of the contract to design Holyoke Community College.

The investigation showed, then, that monies paid in exchange for design contracts had been deposited in a campaign account. It further demonstrated that campaign finance laws had been violated in an attempt to cover up such activity. These include laws which require that contributions to political campaigns be reported in the name of the true donor, prohibit corporate contributions, and limit individual contributions to those of a certain size. The investigation also demonstrated that records of contributions should be retained by the Office

of Campaign and Political Finance for a longer period of time than is currently required.

Recognition of these problems in enforcing the campaign finance laws underlies the Commission's recommendations for reform which are described in detail in another section of this report. The Commission's campaign financing proposal calls for the imposition of low limits on contributions which may be made to candidates and for public financing of campaigns for legislative and statewide office. In this way, the burden of fundraising will be lifted from candidates, as will their indebtedness to those making large contributions.

The Commission's proposal also calls for the strengthening of enforcement of the campaign finance laws and the retention of records for six years. By giving the agency responsible for the administration of the laws a specific mandate to perform audits and investigations and the power to impose penalties on violators, agencies of the Commonwealth will be better able to continue the Commission's work of detecting abuses such as those described above.

CASE STUDIES OF CASH GENERATION FOUND BY
THE SPECIAL COMMISSION IN FINANCIAL INVESTIGATIONS
OF PRIVATE FIRMS WITH SUBSTANTIAL PUBLIC CONTRACTS

INTRODUCTION

The Special Commission was mandated by the General Court of Massachusetts to investigate an extremely broad and complex field of public business, and to do so in an acutely limited period of time. The Commission could have investigated any of over 2,000 general construction contracts let since January 1, 1968; an even larger number of public design contracts; many times that number of related engineering, testing, planning, supply and subcontracting agreements; dozens of state and county agencies; and hundreds of private firms which, directly or indirectly, rendered services to those agencies related to the design and construction of buildings.

Due to time limitations, therefore, the Commission necessarily left unstudied many contracts, agencies, and firms. Many others were investigated for limited purposes: to follow up a specific allegation, to identify a single example of poor construction, to trace one instance of laundered funds. Some investigations were undertaken which could not be finished due to limited resources, uncooperative witnesses, unavailable records, or other reasons.

Nevertheless, almost all the brief or incomplete investigations were as instructive to the Commission as the cases it heard in detail. The same patterns and practices of corruption and shoddy work were unmistakable, even where payoffs could not be traced to their ultimate recipients.

In the Commission's investigations of white-collar crime, if there was one common denominator to be found, it was the use of cash in virtually all payments, be they bribes, kickbacks, or political contributions. Therefore, almost all investigations in which evidence of corruption was sought began by obtaining, through compulsory process, the financial records of a firm doing business with a public agency. Those records were then audited by financial investigators on the staff of the Commission.

The audits concentrated on finding evidence of the withdrawal of cash from the accounts of the firm with which its principals could make illegal payments. If found, instances of cash generation were reviewed for possible correlation with contract awards or the receipt of fees from public agencies, and for tax and other violations apparent on the face of the books.

Individuals identified through auditing as involved in cash generation were interviewed, and the investigation then proceeded with efforts to identify the ultimate recipients of the cash. Therefore, it was essential to these investigations to determine methods of cash generation by proper procedures for analyzing books of account, paid checks, bank records, accounting work papers, invoices and other documents which form a "paper trail" leading at least part of the way to corrupt public officials.

Special auditing and investigative techniques were developed by the staff of the Special Commission to analyze these records. These techniques were important in formulating all the individual cases of corruption set forth earlier in this report, because virtually every case investigated by the Commission presented instances of cash generation practices.

The following nine case studies of cash generation are incomplete although well researched and documented. These investigations were left unfinished due to time and other restrictions imposed on the Commission. (Therefore, the names of persons and firms are omitted.) Commonly, full financial records were not produced in response to the Commission's summonses, often on excuses of loss due to alleged incidence of fire, flood, theft, or destruction "in the ordinary course of business."

The Commission's auditors found, with disturbing frequency, that private firms receiving tens of thousands of dollars of taxpayers' money had no acceptable financial records to account for the receipt and disbursement of those funds. That finding impelled the Commission to propose stringent record-retention and auditing requirements for such firms. The Commission's proposals on this subject, which have been enacted into law, are described in Volume 8 of this report.

The following representative cases are not reported in the preceding sections of this report: those sections describe cases in which the Commission was able to go beyond the initial investigative stages to reach conclusions. But the cases below do further document, albeit partially, patterns of the improper generation and disposition of large amounts of cash by firms doing business with the government. Those patterns are the same ones found in the cases where complete evidence of corrupt practices was found. These more limited cases, therefore, reinforce the Commission's finding that improper activities involving cash payments have been a widespread practice, not a rare thing, in Massachusetts public contracting. The Commission's public hearings disclosed only the tip of the iceberg; the following cases show that the rest of the iceberg resembles what has so far come into view.

The patterns that emerge of cash generation practices demonstrate the necessity for further investigation of political corruption and other white-collar crime in Massachusetts. The overall trend is unmistakable; from one firm to the next there are clear patterns of cash generation that recur regularly. The Commission has made every effort to document, as fully as possible, evidence which would assist such future investigative efforts. In accordance with the Commission's mandate, referrals of such evidence have been made to law enforcement agencies and professional disciplinary bodies.

AN ARCHITECT WITH A LOCAL MONOPOLY

The Commission's investigations identified an architectural firm which received 23 contracts for housing-for-the-elderly projects; it also received almost all the substantial contracts awarded by a large city in Massachusetts. Investigation by the Commission's engineering staff found that the buildings constructed under the supervision of this architect were generally inferior in design and construction and in some cases unsafe. For example, the Commission determined that an eight-year-old housing for the elderly project designed by this architect was in such poor condition that the estimated cost to correct the deficiencies would exceed one million dollars.

It is apparent from an analysis of the records that because of substantial cash withdrawals from the firm a cash flow problem developed. Ultimately the company filed for bankruptcy.

During a four-year period, the investigation identified checks amounting to \$124,315 issued by the subject firm which were all cashed. These payments were made to the following:

a. principal officer	\$ 41,140
b. relatives of (a)	13,800
c. employees	31,175
d. consultants	28,000
e. business associates	8,600
f. others	1,600
	<u>\$124,315</u>

Although substantial sums from the first three categories (a, b, c) were charged to loans receivable accounts, most of the "loans" were shown on the records at the end of the period as unpaid with total balances of over \$102,000. The employees interviewed could not recall receiving payments from the architect which could be characterized as loans nor could they recall that they cashed any large checks. When shown the cashed checks most respondents said again that they could not remember them. However, all denied that they cashed checks for the principal officer.

In addition, a supplier of equipment used on several of the architect's projects testified under oath before the Commission that he gave approximately \$10,000 in cash to a relative of the architect. The relative was a field supervisor on job sites for the architect. His position was to oversee all of the construction, to recommend the acceptance of change orders, and to determine whether materials and semi-finished work supplied and installed met the contract specifications. It follows that reasons for making kickbacks existed in dealing with the architect; the Commission has evidence of some such payments actually having been made, so that other checks cashed by suppliers and consultants would be suspect as having kickback potential.

A number of employees were interviewed and asked for reasons for the unusual success of the architectural firm in securing almost all the contracts awarded by one city. One architect-employee responded that the principal officer was "buying his work". Another architect-employee stated that the firm did not get all of its jobs because of its excellence in design; he added that "we never won any awards". The Commission, as stated above, had established that buildings constructed under the management of the architectural firm were of poor design and construction. In light of this, it was of interest to find that:

1. Four \$1000 checks were issued to the mayor of the city involved after he left office. He was also given the use of the firm's American Express credit card.
2. After a member of a housing authority served as chairman and vice chairman during a five-year period he became an employee of the architectural firm for one year.
3. Four checks were issued to an individual who had the same name and address as that of the attorney for a local housing authority.
4. One check was issued for \$1067 to a management company with a notation on its face breaking down the total with the names of the following:
 - a) \$491 mayor (same as in #1 above)
 - b) \$326 city councillor
 - c) \$250 city councillor

All the above payments were charged to various corporate expense accounts on the books of the firm.

The Commission halted its investigation of this firm at the request of the United States Attorney, whose office was actively engaged in a Hobbs Act investigation involving this firm and one of its housing contracts.

AN ARCHITECT'S RELATIONSHIP WITH A COUNTY

A financial examination of an architectural firm that was successful in obtaining many contracts from one of the state's counties disclosed that the firm expended large sums for travel and entertainment in connection with obtaining

public contracts and that it made a direct payment to a county Commissioner.

One of the two officer/stockholders of the firm obtained all the firm's public contracts and was described by witnesses as the "contact man" who frequently entertained politicians and public officials. This officer was a known associate and sometime golfing companion of certain politicians and public officials who acted in awarding or supervising various of the firm's public contracts.

A limited examination of the firm's records disclosed that the public-contract-seeking partner was reimbursed for travel and entertainment expenses incurred by him and that payments made on account of credit card purchases were also charged to travel and entertainment. The officer's reimbursements and credit card payments were as follows:

<u>Year</u>	<u>Officer's Reimbursements</u>	<u>Credit Card Payments</u>
1973	\$ 6,412.89	\$11,379.11
1974	8,997.52	9,592.58
1975	11,254.23	8,278.38
1976	8,116.45	9,569.37
1977	<u>6,558.50</u>	<u>5,463.46</u>
Totals	<u>\$41,339.59</u>	<u>\$44,282.90</u>

In the above years the other partner received a total of only \$4,507.43 in reimbursement for travel and entertainment expense.

In 1977 two corporate checks totalling \$5000 signed by the public-contract-seeking officer were paid to a former Commissioner of the county with which the firm had contracts and from which it was seeking another. A review of the minutes of past meetings of the county commissioners disclosed that this commissioner consistently voted in favor of contracts for the subject firm. The checks were charged to legal expense on the firm's books; however, no bills for legal fees or other supporting documentation for the payments could be found in the Commission's search.

The firm's bookkeeper was interviewed and stated that she simply followed directions and had no knowledge of the purpose of the checks. The other officer claimed no knowledge of the payment of the checks and stated that he had no specific knowledge as to how his co-owner operated in obtaining public contracts. He knew of no legal work done for the firm by the former county commissioner who received the checks.

Finally, the public-contract-seeking officer and the former county commissioner both invoked the privilege against self-incrimination in declining to answer questions before the Special Commission.

ANOTHER ARCHITECTURAL FIRM

The Commission's examination of an architectural firm revealed that a significant amount of cash was generated through the issuance of checks payable to officers, employees and petty cash. The total of cash generated by this process was \$20,000 in 1972 and \$21,000 in 1973. For a four-month period in 1974 the total was \$6,200. In addition, two cashier's checks totalling \$4,500 were purchased by the corporation in this same four-month period.

In addition to the checks described above, substantial checks were issued to an officer of the corporation and deposited in his personal account. These checks totalled \$13,500 in 1972, \$41,600 in 1973 and \$7,300 for a six-month period in 1974. When queried about these large checks the officer stated that they were loan payments from the corporation. He also stated that he was a heavy gambler. (That reason was offered by a number of witnesses interviewed by the Commission's investigators to explain their handling of large amounts of cash; they claimed that they were trying to hide their income from their wives because they were gambling it away.) The Commission's audit found that from January, 1973 to August, 1973, checks totalling approximately \$37,000, in addition to his salary, were deposited to his account, but a note on a bank charge for \$125 stated it was to cover an overdraft on his account. It therefore follows that the \$37,000 as well as the salary were fully expended by the officer during the year. The personal records of the officer were not available for audit.

The following schedule shows the amount of cash generation:

	<u>Petty Cash</u>	<u>Checks cashed</u> <u>Others</u>	<u>Officers</u>	<u>Checks Issued</u> <u>to Officers</u>	<u>Total</u>
1972	\$ 9,500	\$ 5,000	\$ 5,500	\$13,500	\$ 33,500
1973	1,000	13,800	6,200	41,600	66,600
1974					
(Partial)	1,700	-	4,500	7,300	13,500
	<u>\$12,200</u>	<u>\$18,800</u>	<u>\$16,200</u>	<u>\$62,400</u>	<u>\$109,600</u>

Another reason for the Commission's interest in this firm was its principal engagement in public projects and its possible association with other firms under investigation by the Commission.

An officer of a general contractor (referred to here as "A") testified that his company was awarded a substantial contract to build a high school. The architectural contract for that school had been awarded to the subject architectural firm. The cost of the project, as originally estimated by the architect, was reduced by some two million dollars when the job was bid, thus reducing the architectural fee by about \$175,000. In an effort to recoup the reduction, the officer of the subject firm met with A and suggested that A help to effect the recoupment. When asked how this could be managed the contractor

was told that this was done every day and that A was astute enough to figure a way. A refused to cooperate.

Later when two million dollars of "extras" were added to the job, the architectural firm requested of A that it be paid ten percent of the "extras". This was also refused. The officer of the architectural firm made a statement to the effect of "You'll be sorry." From that point on the architectural firm attempted to slow down the entire operation. This was done by delays in approval of shop drawings, slow processing of change orders and lack of cooperation from the clerk-of-the-works. A stated that he had no problems with the subcontractors on the job, that they knew what the architectural firm was doing and were sympathetic to the general contractor. One of the general contractor's superintendents told A that the architect said that A "would be given ulcers before the job was finished." Another superintendent was also told by the architect that he was going to "get" A.

A FORMER MAYOR HIRED BY AN ARCHITECT AS A "CONSULTANT"

An architectural firm was selected for investigation because of a high frequency of housing-for-the-elderly project awards. An analysis of 82 such projects, which were either in the design stage, the construction stage, or the initial occupancy stage, showed that of the 82 projects, 46 different architectural firms received jobs. The subject firm, however, was awarded 15 of the 82 projects or 18 percent of the work, and 20 percent of the dollar value of the design work.

An examination of this firm's financial records was limited to the seven-year period from 1970 to 1976. During this time it was determined that \$239,473.16 of cash was generated. With few exceptions, cash was generated through the firm's principal officers. Typically, a check would be made payable to an officer who would cash it. This type of check was charged to one of the following accounts: payroll (regular and bonus), employee loan account, travel expense or outside service.

Within this firm, large amounts of cash were generated by an unusual payroll increase. Each of the firm's two principal officers received pay increases from \$960 per week to \$3,494 per week starting in the third week of August, 1975. This rate continued until the end of the calendar year, about 14 weeks. In January of 1976, their pay was reduced to \$1,886.79 per week. The following chart summarizes the total amount of cash generated by this firm for the period 1970 to 1976:

<u>YEAR</u>	<u>AMOUNT</u>
1970	\$ 10,260.40
1971	9,854.85
1972	33,315.41
1973	24,532.97
1974	48,197.28
1975	100,285.82
1976	<u>13,026.43</u>
Total	<u>\$239,473.16</u>

Another reason the firm was a candidate for investigation was that during the 1970 to 1976 period the firm derived 39 percent of its income from state projects. In 1975, when it generated the largest amount of cash, it received 46 percent of its income from state work.

An analysis of the firm's cash disbursements journal and cancelled checks disclosed that a particular individual received weekly payments of \$150 during the 1970 year for a total of \$6,900. The expenditures were charged to an "outside service" account. The firm was unable to produce invoices to substantiate these payments. This individual had been the mayor of a city from 1966 to 1969. The firm had received two contracts awarded by the mayor during the 1968-1969 years; one for a school addition and the other for an urban development project.

When interviewed by the Commissioner, the former mayor stated that he became a consultant/real estate agent in 1970 and remained so until his election to the General Court in 1971. He explained that as a consultant he and his one employee would study the needs of a city, explain the needs to city officials and advise how the city could obtain federal funding. The former mayor admitted that he then gave the information to the architect who would be able to make early contact with city officials. The former mayor claimed that he was on a retainer and did not submit billings or written reports to the architect. He was unable to recall any specifics of work done.

AN ENGINEERING FIRM

An engineering firm was identified as having been regularly employed by a number of architects which the Commission had under investigation. The Commission staff, noting that the firm had substantial contracts with a state agency, audited the available records of the firm.

An analysis of cancelled checks and disbursement journals disclosed that most of the cash was generated by the firm's two officers through the negotiation of checks made payable to cash. The balance of the cash generation was similarly provided by two office employees and a principal engineering employee. A

schedule of the cash generated by the cashing of checks for a five-year period is shown below.

Account Charged	Officers	Employees	Total
professional services	\$ 7,500	\$ -	\$ 7,500
travel	2,000	1,200	3,200
sales promotion	1,000	500	1,500
loans receivable	8,900	2,000	10,900
office expenses	510	1,440	1,950
salaries	3,000	1,000	4,000
rent	<u>1,387</u>	<u>-</u>	<u>1,387</u>
TOTALS	<u>\$24,297</u>	<u>\$6,140</u>	<u>\$30,437</u>

The Commission's staff found in addition that the salary checks cashed were not payroll checks but were checks written on the firm's regular checking account. The cashed checks thus do not represent periodic payments; they do represent "extra" payments to the officers and to the principal engineer-employee.

A third scheme for generating cash involved three checks of \$500 each, all issued on the same date to the two officers and the principal engineer-employee; all were cashed. On another date two checks of \$1,200 each were issued to the two officers both were cashed.

A principal officer of this same firm received a check for \$1,000 from an architect, while two days later he received \$1,000 from an engineering firm. Both expenditures were charged to "service" expense accounts on the books of the paying firms. Both checks were cashed by the officer on the same date. The monies were not recorded on the books of the subject corporation (the payee) nor was income reported by either the corporation or the individual. When queried about the payments the officer stated that they were repayments of loans. When further queried as to the disposition of the cash, the officer stated that he had paid it to several employees of the architect. The architect had financial problems at the time and had not paid his employees for weeks. The Commission's investigators interviewed the employees identified by the officer as having received the cash; each denied receiving the money.

A Commission staff member interviewed an architect who employed the subject engineering firm on a proposed community college construction project. While on the job, the architect was approached by A, a member of the Board of Regional Community Colleges. A told the architect that if he wanted to continue on the project he should employ the subject engineering firm. At the time, A was also a member of the board of directors of the subject firm. A's service as director of a firm doing business with the public agency of which he was an official, and his intervention on behalf of the firm with the agency, presented an apparent classic conflict of interest.

The principal officer of the subject firm, when interviewed, stated that when the corporation was formed, A was a director but never a stockholder and that

less than three months later he requested that his name be removed as a director. The principal officer then claimed that A's name was placed there in error by the accountant of the subject firm, and subsequently provided a copy of the minutes of a director's meeting to establish that the individual was replaced as a director. The Commission also found A's name as the payee on checks totalling \$1,719.32 issued three years later by the subject firm and charged to "improvements."

The Commission's audit of the subject firm also disclosed the issuance of a \$250 check to an individual with the expenditure being charged to office expense. The name of the payee on the check was the same as that of a board member of a state authority which approved substantial contracts for an architectural firm which, in turn, employed the subject engineering firm.

AN ENGINEERING CONSULTANT TO ARCHITECTS UNDER INVESTIGATION

An engineering firm was selected for audit because more than 80% of its income was derived from public work, the income was substantial, and a good portion of its work was awarded by two architects who were prime suspects of corruption in connection with state and county contracts.

The principal officers of one of these architectural firms refused to testify before the Commission and invoked their privileges against self-incrimination. Principals of the other architect cooperated with the Commission and gave sworn testimony about the firm's long-standing practice of demanding and receiving kickbacks from consultants and suppliers. One of those principals testified to a kickback agreement with the subject engineering firm.

Due to time restrictions the Commission made only a limited audit of the engineering company's books and records. Nonetheless, cash generating checks were identified.

The company's engineering staff was headed by the principal owner of the firm and two key employees. The records of the firm disclosed a most unusual practice of granting bonuses in large amounts and on numerous occasions. During an audit of what were considered four crucial years, the Commission found that, with the exception of the two key employees, the firm's staff received annual Christmas bonuses ranging from \$500 to \$2,500. However, the key employees received many bonuses throughout the years and for sums which were greater in total than their salaries. Their incomes, when compared to those of other engineer-employees in their field, appeared to be unreasonable. The bonuses paid to them ranged from \$1,000 to 10,000.

The following analysis was drawn from the payroll records of the firm:

Employee A

<u>Year</u>	<u>Salary</u>	<u>Bonuses</u>	<u>Total</u>	<u>Number of Payments</u>
1970	\$20,394	\$ 23,300	\$ 43,694	9
1971	20,909	42,950	63,859	12
1972	23,702	34,700	58,402	6
1973	28,606	17,500	46,106	3
Total	<u>93,611</u>	<u>118,450</u>	<u>212,061</u>	

Employee B

<u>Year</u>	<u>Salary</u>	<u>Bonuses</u>	<u>Total</u>	<u>Number of Payments</u>
1970	\$18,200	\$24,000	\$ 42,200	7
1971	18,550	33,400	51,950	9
1972	19,550	27,950	47,500	6
1973	21,500	6,100	27,600	4
Total	<u>77,800</u>	<u>91,450</u>	<u>169,254</u>	

Owner-Officer

<u>Year</u>	<u>Salary</u>	<u>Bonuses</u>	<u>Total</u>
1970	\$ 55,000	-0-	\$ 55,000
1971	100,000	-0-	100,000
1972	100,000	-0-	100,000
1973	55,200	-0-	55,200
Total	<u>310,200</u>	<u>-0-</u>	<u>310,200</u>

Checks representing bonus payments to the two employees were analyzed.

During this four-year period checks totalling \$29,356 were cashed. One of the employees said that he did cash checks but that he never returned the cash to the owner-officer nor did he give it to anyone else.

During this four-year period the owner-officer received many checks from the firm which were charged to a personal loan account. Most of the checks reflected the personal nature of the payments. However, many checks in substantial, round amounts were issued to the officer and deposited in his personal checking account. The accountant made substantial yearly adjustments which increased the owner-officer's salary account and decreased his personal loan account because of a concern for the taxability of the loans. The loan account balance nevertheless increased during the four-year period from \$53,000 to \$140,000. Cash generation studies of his personal checks and those of the two key employees were not made due to time restrictions.

From the records of the aforementioned architect who did cooperate with the Commission, it was learned that this engineering firm, in consideration of future work from the architect, agreed to waive \$7,000 owed to it for past services. This waiver was incorporated in an informal note to the architect and signed by the owner-officer of the engineering firm.

It appears that the engineer's waiver of monies owed by the architect was in keeping with the latter's admitted practice of demanding kickbacks. The architect had testified that the kickback process was, in some cases, effected when a consultant agreed to accept less than the amount billed. The "discount"

would not be recorded on the books. In this case the architect, being on the accrual basis for reporting expenses for income tax purposes, would report the gross billing as deductible engineering expense. The engineering firm, being on the cash basis for reporting income for income tax purposes, would not report the amounts billed, only the amounts actually received. Thus the \$7,000 in this case was reported as deductible expense by the architect but was not reported as income by the engineering firm. The case thus illustrates a possible method of funding improper payments with after-tax dollars.

A GENERAL CONTRACTOR'S PETTY CASH FUND

The Commission's examination of the books of a general contractor revealed that a significant amount of cash was generated through the petty cash fund. The total amount generated through this fund during the period of July 1, 1974 through December 31, 1977 totalled \$90,033.83. The principal officer of this firm, referred to as "A", received \$28,133.80 during the same period of time.

Questionable conditions concerning the management of the petty cash fund deserve examination. In an interview with the Commission's staff, the contractor's bookkeeper stated that everyone in the office had access to the petty cash fund because it was kept in an unlocked safe during the day. The bookkeeper also stated that she did not protect her position as the overseer of the fund because recipients of money never filled out petty cash slips which were intended to document amounts spent. The accountants for the firm, in their 1974 work papers, stated the problems they had with the petty cash fund as having "no back-up nor support, no signatures on petty cash slips." In addition, rather than following a standard accounting procedure, the bookkeeper and comptroller charged petty cash expenditures to the books using arbitrary methods.

The Commission's staff, through interviews with several of the firm's employees, discovered numerous ways in which the petty cash fund was used. The supervisor and A both received weekly draws from the petty cash fund. Although these draws were made with great regularity, at least in the cases of the individual supervisors, the petty cash slips were never signed.

A, the principal, received a weekly draw from the petty cash fund of at least \$100, which was alternatively charged to a "job expense" or "non-refundable bid deposit" account. The assistant comptroller would then fill out a petty cash slip for the difference between the amount of cash in the fund and the total accounted for on petty cash slips, then charge the expenditure to whatever account he felt appropriate.

The petty cash fund was also used to reimburse the firm's general superintendent for a political contribution he made to a city councillor. The superintendent's personal check for \$250, payable to a re-election committee, was made at the request of the clerk-of-the-works on a school construction project. A petty cash slip for \$250 was charged to miscellaneous business expenses. A, in an interview with the Commission's investigator, stated that his petty cash expenditures were used to take people to lunch, to buy coffee or materials, and to attend job meetings.

The Commission's investigators found that checks made payable to "petty cash" for the period of July 1, 1974 through December 31, 1974 totaled \$12,538.50. The Commission's analysis of petty cash slips for the same period indicated that A received \$4,370, or 34.8 percent, of this cash. During the period January 1, 1975 through December 31, 1975, checks issued to petty cash totaled \$28,139.01, and A was credited with receiving \$5,800.

Supporting documentation was lacking not only in the petty cash fund, as shown throughout this particular report, but also in two other accounts, the "outside services" and "equipment in field" accounts. When cancelled checks of the corporate bank accounts were examined, cashed checks, totaling \$15,560, that were issued to certain individuals (as opposed to the petty cash account) were identified. In addition, a corporate check for \$8,000 was issued to another construction company and was charged to the "equipment in field" account, then deposited by the payee. When the Commission examined paid invoices, no supporting documentation for this payment was found.

The principal owner-officer of the latter construction company (the payee), was also an engineer for a city, implying a possible conflict of interest. This payment was made during the period of time the subject construction firm was building a county courthouse located in that city. The county's files were examined by the Commission; this city engineer was found to have had major responsibilities such as sewer applications and water permits for this courthouse project. The city engineer thus had the potential leverage to make conditions favorable or unfavorable and perhaps more or less costly for the subject construction firm. Furthermore, the city engineer when interviewed could not produce supporting documentation for the alleged sale of equipment, leaving the \$8,000 payment still unexplained.

ANOTHER CONSTRUCTION COMPANY

Examinations of a general contracting firm by the Commission indicated that a significant amount of cash was generated in the period 1968-1974. This cash totaled \$155,143 and was generated through various loan and expense accounts. The subject firm also received a large number of state and county contracts, which were found to have unusually large numbers of change order proposals.

Cash was generated by the president of the corporation, the owner of the corporation, the tax consultant to the corporation, and a painting foreman employed by a subsidiary corporation. (The owner was not an officer of the corporation.)

Checks payable to the president, which were cashed, were generally charged to his personal loan account. In several interviews with the Commission the president denied ever having a loan account and stated that some of the signatures on the checks in question were not his. A handwriting analyst/expert hired by the Commission who analyzed these checks was of the opinion that these signatures were genuine. Checks cashed by the president of the corporation between December, 1968 and March, 1975 totaled \$32,256, and the loan was never repaid.

Checks paid to the owner of the corporation were also charged to his personal loan account. The owner has not been interviewed by the Commission regarding the proceeds of these checks. Checks cashed by the owner of the corporation between November, 1968 and November, 1975 totaled \$35,327.

Checks received by the tax consultant were charged to the "professional services" account. The tax consultant stated in an interview with the Commission that the checks were cashed due to the fact that his bank in Florida (his place of business) would not immediately credit checks to his account, and as a result he was required to cash checks in Massachusetts and transport the cash to his bank in Florida. Checks cashed by this individual between May, 1971 and September, 1974 totaled \$64,539. He stated that none of this cash was returned to the owner, or to any officer, of the corporation.

Checks payable to the painting foreman, which were cashed, were charged to various expense accounts. The Commission was unable to locate the painting foreman to question him about these checks, which between the period of December, 1968 and July, 1971 totaled \$23,021.

This general contractor was selected by the Commission for investigation following an analysis of the number of state and county contracts received by the firm and the number of change orders relating to these contracts. An example of the latter was found on a contract received by the subject firm for renovation of

a building at a state college. This contract was awarded to the subject firm for \$1,049,907: as a result of 55 change orders the final contract price was \$1,523,674. The Commission's audit found that \$13,600 in cash was generated by the firm in the month that this contract was begun.

The firm received contracts totaling \$7,208,537 from the Commonwealth and contracts totaling \$9,983,447 from a single city in the Commonwealth. Approximately 90 percent of the contracts received by this corporation were either state, local, or federal contracts. This information was obtained from an analysis of the corporation's cash receipts. These contracts were received in the period 1968-1975.

As would be expected, very few political donations were made through the corporate bank accounts. But in an interview with the Commission, the tax consultant stated that the owner purchased plates at approximately 40-50 testimonial dinners per year (over a seven-year period) through his personal bank account. The owner's personal checks were purportedly thrown away.

Payments by a subsidiary of the subject firm were also made to an industrial inspector employed by the Commonwealth's Department of Labor & Industries. In an interview with the Commission, this individual stated that he "moonlighted" for the painting subsidiary of this corporation and that all payments received were bona fide payments for painting services rendered. Payments to this industrial inspector between January 1970 and May 1973 totaled \$18,372. Seventy-one percent of these checks were cashed. This individual claimed that the signatures on three of these cashed checks totaling \$1,410 were not his, and that he had not cashed these checks. He also stated that he never made a decision or recommendation to the Department of Labor & Industries regarding this construction corporation. An examination of documents obtained from the Department of Labor & Industries did not reveal that he had made any such recommendations or decisions. It was also determined by the Commission that he was a member of the painters' union at the time that these payments were received.

However, examination of the records obtained from the Department of Labor & Industries did reveal that there were a substantial number of protests made to that department regarding this general contractor. It was also confirmed through a Commission interview with a masonry sub-contractor that this contractor did violate the state's sub-bid laws. The general contractor received the subcontract for masonry for two city building contracts and in turn subcontracted this work to the masonry subcontractor ("sub-subcontracting" is illegal). The masonry subcontractor received \$116,034 from the general contractor. The general contractor was paid \$125,000 by the city for these sub-contracts. Thus, payments

to the inspector by the contractor may have been a form of insurance against problems on such protests.

A FAMILY OF COMPANIES

The Commission investigated a general contracting firm which received a large number of contracts from state agencies and local housing authorities. In addition, the same owners operated a subcontracting firm and a construction supply firm.

This investigation disclosed that the general contractor received a \$15,000 check which was deposited into its bank account. However, upon learning that the check was actually intended for the supply company, the contractor issued a check for the same amount to the rightful recipient, the supply company. The major problem in this investigation was that records which would confirm receipt of this check by the supply company could not be found.

In an attempt to find these records, the following accounts were analyzed: the bank accounts of the three aforementioned companies; all of the principal officers' checks and savings accounts; and all of the mortgage accounts. All relevant and available bank records were analyzed, and all possibilities of negotiation were investigated.

The check was recorded as a disbursement to the supply company on the contractor's books. The contractor's bank statement also properly reflected the \$15,000 check. However, the \$15,000 was not recorded on the books of the supply company, nor did its bank statements reflect any such deposit. In addition the check from the contractor to the supply company was never found. One explanation according to the vice president of the involved bank was that the check could have been cashed.

The investigation of the subject firms also concerned a five-week period during which \$13,807.78 was charged to the subject firm's payroll for wages. Although the payroll records indicated that five people were on the payroll for each of those five weeks, only five checks were issued averaging \$2,600 each. The Commission's investigation showed that these checks were issued to the principal officer's five grandchildren, and that all checks were cashed. The average weekly pay for these children, all of whom were under the age of seventeen, was \$520. In addition, the time period involved the months of October and November when children of these ages would have been in school.

OTHER CASH GENERATION TECHNIQUES

There are many other ways to generate cash from the accounts of a business, and many ways to make payoffs without cash. Not all the ways were found in the Commission's audits. For instance, diversion of income was rarely found, although the audit usually included tracing fee payments from public agencies into the accounts of the subject firm.

More common were favors for public officials in the forms of checks for services allegedly rendered by the official to the firm; meals, trips, entertainment and use of charge cards and accounts; direct supply of goods or services, such as building materials, architectural work, printing campaign literature; payments to third parties to furnish such goods or services to public officials.

The following are further illustrations of the variety of schemes uncovered during the Commission's investigations.

1. A consulting engineering firm which had received substantial work from an architect over the years was asked to assist the architect to generate cash. Because the engineer wanted to continue its business relationship, and because it wanted to collect fees owed by the architect, it agreed to the request.

The architect had been instrumental in the awarding of a contract to an electronic equipment company. That company had agreed to kick back \$5,750 to the architect but it wanted to show the kickback as a tax deductible expense. Routinely the architect received kickbacks in cash form. In this case he did not want his firm's name on this type of check. Thus he arranged to have the engineering firm forward a false bill for engineering services to the electronic equipment company. A check for \$5,750 was issued to the engineering firm and deposited to its account. The engineering firm then issued a check to its principal officer who deposited it in his personal account. He then issued a check to himself and cashed the check. The cash was delivered to the principal officer of the architectural firm.

The above was verified by the sworn testimony of the principal officers of the engineering firm and of the architectural firm. The involved officer of the electronic equipment company had died prior to the investigation. The engineering firm continued to generate an additional \$10,000 in cash for the architect in similar transactions. However, in these instances the only parties involved were the architectural firm and the engineering firm. The architectural firm issued checks to the engineering firm which negotiated the checks as in the transaction described above.

The principals involved in these transactions gave sworn testimony as to the accuracy of the above described scheme. The books and records of these firms were analyzed in detail. All of the incriminating documents (cashed checks and invoices) were identified during the audits. Fortified with this documentary evidence the staff attorney effectively elicited admissions from the parties involved. In the first transaction the architect did not record the transaction, while in later transactions the architect recorded the issuance of the checks as professional engineering expenses and failed to report the cash received as income. The engineering firm reported the receipt of the checks as income and charged engineering expense when it issued checks to its principal officer.

2. During the audit of an architectural firm's cash disbursements journal it was noted that monthly payments were made for accounting services to an accounting firm. The firm was a partnership and bore the name of a prominent and influential politician who was also a Certified Public Accountant. Based on an audit of the travel and entertainment accounts it had been established that the architect had extravagantly wined and dined this politician over a number of years. It was known that the politician had intervened on behalf of the architectural firm to secure state contracts.

The Commission reviewed the books and records and found no evidence that the accounting firm had performed any services. Staff then proceeded to interview the architect's office manager, bookkeeper, and the other partner in the accounting firm and an employee of the accounting firm. Their sworn testimony confirmed the findings.

The principal officer of the architectural firm later testified under oath that the payments were payoffs to the politician, and that no services were rendered. He further testified that he later changed the form of payoffs from monthly checks to monthly cash payments. The audit identified a number of checks, issued by the firm each month, which were cashed and which were consistent with his testimony. In addition, cash generated from consultants and suppliers was also available to allow the firm to meet its monthly commitment to the politician.

3. In an analysis of regular checks of an architectural firm auditors identified four which were cashed; all were issued on the same date, were in sequential order, and each was made out for the same amount, \$500. All were issued to employees, one of whom was the principal officer and all were charged to payroll. The non-officers testified under oath that they gave the cash to the officer. He in turn testified under oath that he delivered the \$2,000 in cash to an elected official in consideration of a state contract.

4. An architect testified that he received a \$4,500 cash kickback from a supplier based on an agreement made at the time of contract award. The contract involved furniture and fixtures for a county jail. The audit identified four checks, two from the supplier and two from its related company, which were cashed. The principal officer of the supplier admitted under oath that the checks represented kickbacks to the architect.

5. During a review of regular checks of an architectural firm the Commission found that an employee was paid a substantial bonus of \$3,500; the check was cashed. The employee testified that he kept \$500 of the cash to cover the income taxes he would be liable for and returned the balance to a corporate officer. The money was placed in an envelope and at the direction of the officer the employee delivered the envelope to a public official who had been instrumental in awarding a contract to the architectural firm. The principal officer later gave sworn testimony to the accuracy of the employee's evidence.

6. A political fundraiser for an incumbent governor obtained a state contract for an architect in exchange for a cash contribution. Prior to receipt of payments on the contract, the architect was pressured by the fundraiser for the payoff. The architect's business cash flow was stagnant at the time but he had recently deposited the proceeds from the sale of his home to his savings account. He withdrew \$5,000 in \$100 bills and delivered a partial payoff to the fundraiser. After this information was elicited from the architect in interviews, the Commission found bank records confirming the cash generation and corroborating the story.

7. A major architectural firm obtained a state contract through a political fundraiser. The firm employed a local architect as its on-site manager. Pressure was exerted on the firm for an advance on the cash contribution agreed upon. The corporation issued a check for \$5,000 to the local architect and mailed it to his home. He endorsed the check over to a principal officer of his firm and he arranged to have it cashed by contacting the president of a Boston bank. The check was cashed by the principal officer and delivered to the fundraiser at the office where he worked as a public employee. (The president of the bank had been the principal fundraiser for the preceding governor.)

At a later date the firm sent one of its officers to the local architect's office to make a cash delivery of \$6,000. The cash was in packets of five dollar bills and banded with wrappers which indicated that they came from a foreign country where the firm had an office. The local architect and the courier together delivered the cash to the political fundraiser. The fundraiser was not pleased with the denominations. Shortly thereafter he contacted the principal officer of the local architectural firm (the one who had

cashed the \$5,000 check mentioned above) and had him convert the cash to bills of larger denominations at a local bank. Both the local architect and the principal officer testified under oath to the accuracy of these happenings.

A third payment on this contract was made when, at a still later date, the same courier met with the principal officer of the local architectural firm and the political fundraiser. The courier delivered five \$3,000 cashier's checks to the political fundraiser. The fundraiser was upset that the payment was not in cash and that he was not given names of donors from which to report the contributions. The Commission found that two \$3,000 checks were deposited to the governor's reception committee bank account soon after the payment date. The above transactions were described in the sworn testimony of the principal officer of the local architectural firm. The deposit-of-checks information was obtained from analysis of the governor's reception committee bank statements.

8. During the investigation of a construction corporation it was learned that it had been a party to a federal criminal case involving state contracts. An examination was made of the available records of the corporation which had substantial contracts with the state. Analysis of cancelled checks and a review of the court testimony resulted in the identification of the following transactions:

- a) A corporate check of \$2,000 was issued directly to a politician, the president of a the state senate who deposited it to his savings account. The corporation charged a "dues and subscriptions" account.
- b) A corporate check of \$2,000 was issued to an architect who endorsed the check to a state senator who in turn endorsed the check over to a committee to elect a governor. The corporation charged a "dues and subscriptions" account.
- c) Corporate checks totalling \$23,000 were issued to a principal officer as loans; the checks were cashed and delivered to a state senator who split the fee with another state senator. These payments were to insure continuation of a contract on a substantial project. The corporation charged these expenditures to a "loans to officer" account. Both senators admitted under oath before the Special Commission that they received the monies.
- d) A corporate check of \$5,000 was issued by a subsidiary of the corporation to a principal officer who cashed the check. The proceeds were delivered to an architect who in turn delivered the cash to the political fundraiser of an incumbent governor. The corporation charged this expenditure to an "investment" account.
- e) The comptroller of the corporation submitted false expense reports to the corporation. The reimbursements were deposited to his personal checking account. He then drew checks to cash and delivered the cash to certain political figures, pursuant to directions from his superiors. These expenditures were charged to promotional expenses. The comptroller made these admissions to an investigator during an interview.

9. The principal officer of a landscaping company wrote checks totaling \$6,000 to a fictitious employee. The checks were cashed and the cash given to the principal officer of an architectural firm as a kickback on a contract. The landscaping company inflated the prices of the jobs done on public projects with the architect's acquiescence. The amount of inflation was the amount of

kickback. These findings resulted from an audit of the books and records of the landscaping firm and from interviews with the principal officer who in sworn testimony admitted to the scheme.

10. A commission salesman was asked by a principal officer of an architectural firm for a kickback of \$1,000 on a laundry equipment contract. He agreed to make the kickback from his own funds. He proceeded to save part of his weekly commissions at \$20 to \$100 per week until he met the agreed figure. After the contract was completed he gave the architect the cash. These findings resulted from interviews with the salesman, with an informed employee and with the principal officer.

11. The principal officer of a sporting goods store agreed to make a cash kickback to an architectural firm. He not only made the kickback by cashing a corporate check but he furnished sporting equipment costing \$1,389 to a politician and his family at no charge. The politician had used his influence to effect contract awards in favor of the architect. The Commission learned of these transactions from interviews of the architect's employees and from the testimony of the officer of the sporting goods store.

12. Kickbacks can also be made in the form of free goods and services. During an investigation of an architectural firm the Commission found that the company performed free design work for two politicians, four public officials and a political fundraiser. The firm allowed the use of its credit cards by two politicians and a public official. It financed vacation trips for a politician and for a public employee. In every case the beneficiary of these transactions was influential in assisting the architect with contract awards, in the approval of questionable change orders or in expediting payment of fees by public agencies.

CONCLUSIONS

The foregoing cases confirm that corrupt practices involving improper cash payments are widespread among firms holding design and construction contracts with state and county agencies. Further investigation of any of these cases could lead to definitive evidence of crime.

The Commission's auditors found that the same patterns of effectuating corrupt practices recur again and again from one firm to another. It is remarkable how often public officials recently retired from office (and sometimes those still in office) are found on the books of design and contracting firms. Payments made to such officials by corporate checks may be carried as professional fees (for legal, accounting, "consulting," or some other service) or

for sale of equipment or materials to the firm. But documentation supporting the payments is almost always lacking.

More resources made available to agencies charged with enforcing the Commonwealth's laws against conflicts of interest could disclose more such cases, particularly through audits of firms doing business with public agencies. To make those audit powers effective, the Commonwealth must implement requirements enacted on the Commission's recommendation for record retention and proper accounting procedures for public contractors.

The Commission's investigations showed that companies doing state and county business usually did business with cities and towns as well. Local contracts were beyond the Commission's already broad mandate, but that field of contracting would appear to be equally in need of investigation. The cases summarized in this section suggest that the same practices occurred in that field.

As a matter of technique in conducting financial investigations, the Commission's experience disclosed many recurring patterns:

1. The basic investigative tool, of course, is the ability to analyze the cashed check (and related journal entries). The paid check is the starting point of most investigations of political corruption.

2. Abuse of the petty cash fund and lack of documentation of cash expenditures are common.

3. Alleged loss of records is encountered in almost every case. Investigators must be expert in the reconstruction of financial transactions from bank records and other sources, but, even so, a fiscal audit can be frustrated by sloppy record-keeping or deliberate destruction.

4. Payments to former and even current public officials, for pretextual services or supplies, are sometimes found directly in the books. The auditor must be familiar with the field investigation to be able to identify the names of payees who may be public officials or otherwise significant to the case. Periodic payments, or expenditures with no supporting invoices, will often arouse the interest of a careful auditor.

5. Money for payoffs is often laundered through several companies before emerging in the form of cash. The use of intercompany transfers, overstated payments to consultants, and kickbacks from subcontractors were all found by the Commission. The investigator should not assume that "cash generation" can be found solely by auditing the books of one firm. Funds must often be traced through several firms. The most typical example is the architect who pays public officials for his work and requires his engineering consultants to kick back to him, in cash, their share of the payoffs (thus leaving it to the "second-tier" firm to generate the cash); or who forces consultants to take a discount on their

fees (generating the cash himself, but overstating his payables for tax purposes). Thus, finding cash generation may involve the analysis of deposited funds as well.

6. Payroll records must be analyzed in detail. Payments to employees made from a regular checking account rather than from a payroll checking account usually represent cash generation. Employees accommodate their employers with their cash generating schemes under duress. Payroll records will also identify employees with no Social Security numbers; in most such cases the employees are fictitious and the checks representing the payments are cashed.

7. Invoices representing credit card charges should be analyzed for signatures. Several cases investigated showed that the company assigned its credit cards to public officials for their personal use.

8. Payments are often made to employees for cash generation purposes. The payments are charged to a "loan receivable" account. Seldom are the loans repaid. The employees are usually unaware that the firm's records contain these obligations.

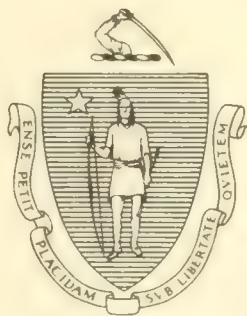
9. Bonus patterns should be studied. An employee receiving bonuses out of proportion to those paid to others may be generating cash for the employer.

10. Many architectural and other professional firms have two principals, one who manages the office and produces work, the other an "outside man" who acts as the firm's business getter. In auditing a firm showing this pattern, special attention should be paid to the loan and payroll accounts of the outside man and to his expense reports and charge card reimbursements.

11. Meaningless or wastebasket accounts on the books of a firm are sometimes easy to spot. Accounts which always merit examination include loans to officers, outside services, donations and contributions, bidding expense, job expense, consulting and the like.

The Commonwealth of Massachusetts

State Library of Massachusetts
State House, Boston



Final Report To The General Court Of The Special Commission Concerning State And County Buildings

December 31, 1980

Created by
Chapter 5 of the Resolves of 1978
as amended by Chapter 11 of the Resolves of 1979
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VOLUME 6

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VOLUME 6

CONSTRUCTION DEFECTS
STATE AND COUNTY BUILDINGS

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CONSTRUCTION DEFECTS
STATE AND COUNTY BUILDINGS
JANUARY 1st 1968 TO DECEMBER 31st 1979

Introduction

From January 1, 1968 to December 31, 1980, the Commonwealth, its political subdivisions, and its public instrumentalities authorized and appropriated expenditures for construction projects totalling \$17.1 billion.¹

From January 1, 1968 to December 31, 1980, the Commonwealth, its political subdivisions, and its public instrumentalities authorized and appropriated expenditures for building projects totalling \$10.4 billion.²

The Commission has specifically identified and studied state and county buildings on which \$4.89 billion (including cost of debt service) has been spent by the Commonwealth.³ The figures which follow describing costs of defects and repairs on public buildings are based on projections derived from the Commission's study of this \$4.89 billion representative sample. The figures reflect the dollar cost as of the year in which the money was spent and have not been adjusted upward to reflect the value of the 1980 dollar after inflation.

During the 1968-1980 period, of the total cost for all construction projects in the Commonwealth, \$7.73 billion has been spent on projects that have severe defects.⁴ Severe defects include such conditions as failing structural systems such that life is endangered, mechanical, electrical and plumbing subsystems that continually malfunction, inoperable or undependable machinery, safety alarm systems that do not work, water intrusion that causes severe secondary damage, and areas of facilities that are unusable because of inadequate architectural, structural, mechanical, electrical, and hydraulic designs.

From January 1, 1968 until December 31, 1980, an estimated 2750-3000 buildings were constructed by the Commonwealth. Approximately three-quarters of those 2750-3000 buildings have severe defects. From 1968 to present, on the average each individual taxpayer has spent \$6,900 for all public construction by the Commonwealth, its political subdivisions, and its public instrumentalities of which \$3,126 has been spent on construction projects with severe defects.⁵

Of the total costs for all projects in the Commonwealth during the 1968-1980 period, \$1.08 billion has been wasted because of unnecessary delays in design and construction.⁶ The average cost per taxpayer for these unnecessary delays is \$437.

Of the total costs for all projects in the Commonwealth during the 1968-1980 period, \$48.7 million has been wasted on projects planned and designed but never built.⁷

There are additional, non-calculable costs: inability to use a space as intended, energy-inefficient buildings, inefficient management of existing space, high maintenance costs, threats to personal safety, inconvenience, physical and psychological hardships, buildings whose atmosphere or design encourage vandalism. All of these are problems the Commission identified, but to which it could not assign a dollar cost.

The Commission estimates that it will cost Massachusetts taxpayers a total of \$848 million to repair all buildings identified, studied, or surveyed by the Commission. It will cost \$2.12 billion to remedy all defective construction from the period of January 1, 1968 to December 31, 1980.⁸ The average cost per taxpayer to make these repairs is \$857. These figures do not include secondary damage resulting from the severe defects.

After conducting two years of technical investigations and surveys of sample state and county buildings, consultant Dr. John Woollett testified before the Commission about the physical defects existing in those buildings constructed by the Commonwealth in the last 12 years. An assistant professor of architecture at Harvard's Graduate School of Design, Dr. Woollett is an expert on construction management and financial forecasting in the construction industry.⁹ The following statement is based on his testimony at the public hearing held May 21, 1980.

The majority of the Commonwealth's buildings of the last dozen years are a disgrace. They are new, but they are in deplorable condition. They are new, but they were poorly planned, questionably designed, and negligently supervised during construction. They are new, but they would never have been accepted in the private sector; yet, with all of its checks on the spending of public moneys, the Commonwealth has accepted them, often over the protests of their users. They are new, but they are often unsafe: new schools and colleges for our children are firetraps, or structurally faulty, or leaky; homes for the elderly are in danger of collapse; other new buildings are grossly profligate in their use of energy and cannot be made otherwise. At best, many new state and county buildings are costly to repair or maintain and offer constant inconvenience to their occupants. We have all paid for them dearly, and we will continue to pay for them dearly.

It might be assumed that the well known examples of faulty construction -- Cape Cod Community College, the Haverhill parking deck, the Middlesex County

Courthouse -- are simply the result of flaws in an otherwise sound system of contract awards and building supervision. What demonstrates the overall inadequacy of the current system of public construction, however, is the extent of serious technical problems throughout the Commonwealth's new buildings. Of the facilities visited by the Commission's construction technicians, 74 percent had buildings with major defects: external walls falling down, non-working heating systems, playing fields that do not drain, failing electrical systems, and cracks in walls and roofs of such size that energy conservation is impossible. One superintendent at the University of Lowell observed, "This roof is nothing out of the ordinary: it functions the same as the roofs on all our other buildings." Questioned further, he went on to say: "Yes, they all leak like sieves. So what's new?" Virtually all of the building managers we spoke with thought that their structures had to be the worst the Commonwealth had built. Cynicism is pervasive. At the county level, defective buildings are the rule, not the exception.

The major problem areas can be summarized as follows. First, many designs do not serve the purpose intended by the users. One section of the State Laboratory Institute in Boston was built to house research on contagious diseases; the Institute's ventilation system, however, does not permit this area to be isolated from the rest of the building. Second, many designs are inadequate, at times incompetent. Construction at a parking garage in Haverhill had to cease half-way because it was feared that the structure could not support its own weight.

Third, bad workmanship is common. One county official wrote, "The workmanship contained in this building ... is downright negligent. If this was your personal house, you would be screaming at the architect and contractor." Of course, many Massachusetts contractors have done good work on public buildings; the problem is that many who do very poor work continue to get contracts. Of the 12 major roofing jobs done by one subcontractor, half have extremely serious problems, each costing about \$1 million to repair. Eight roofing subcontractors performed 80 percent of the work administered by the Bureau of Building Construction (BBC) under the filed sub-bid law.

Fourth, construction supervision is negligent or simply absent. The technician's report on the library at Worcester State College states, "Construction supervision on this building appears to have been nonexistent -- the result is a building with incredible water damage that, combined with HVAC [heating/ventilation/air conditioning] problems, have [made] the building unpleasant to inhabit [and made] certain rooms unsafe for occupancy." A county official reported, "It is apparent that the architect and contractor are attempting to hoodwink the public." A report on a housing project in Melrose

states that "the building was not built in accordance with the plans, specifications, and contract documents." Without supervision, contractors can be expected to take shortcuts. The question is how can such negligence occur when both the designers and the Commonwealth have full-time representatives on site to check on the quality of the construction?

Fifth, designers and state agencies are often careless in administering construction contracts. For the 946 construction contracts that the Commission reviewed, the average time overrun was about 85 percent. When one considers the effect of inflation on construction costs, the interest on billions of dollars of construction moneys tied up, and the cost of providing substitute space or housing for would-be occupants, the total cost of these delays is staggering. No one in the private sector could accept such delays and remain solvent. Many projects extend far beyond this 85 percent average. The Lowell Technical Institute's research reactor, for example, had a time overrun of 810 percent and cost the Commonwealth \$ 850,000 in storage of equipment supplied for the building.

Sixth, designers and the Commonwealth accept buildings that are unfinished, contain serious defects, or have been rejected by the using agency. Often there are no as-built drawings or operating manuals for the equipment, or the HVAC systems have not been mechanically tested. Time and again, on our site visits, chief engineers claimed that they had advised the BBC not to accept a given building, but to no avail. One such letter states, "If anyone should not have been paid in full it is the roofing contractor. The new roof continually leaks and nothing has been done to correct it." Another building superintendent recommended against accepting a playing field; the BBC not only accepted the work but also awarded the contractor another job. Although the chief engineer at Lemuel Shattuck Hospital refused to accept its new mechanical system, the BBC did so.

Seventh, the defects in accepted buildings result in expensive repairs for secondary damage. The supervisor of maintenance and security at the State Laboratory Institute reported that water leaking into the buildings had caused such severe flooding that the electrical system had failed several times. The power plant engineer had suffered electrical burns due to this water intrusion.

My own estimate is that remedial work on state and county buildings constructed over the last dozen years would cost \$300 million. Using the BBC formula for calculating project costs and including financing costs, the total cost to the Commonwealth would be \$714 million for the buildings we surveyed.

The case of Mount Wachusett Community College vividly illustrates a number of these problem areas. The college has a beautiful main building, a building in

which the staff, faculty, and students take great pride. For six years the roof has been leaking badly and the school begged for something to be done. Every time it rains, this beautiful building is inundated. In consequence, ceilings are falling, walls are stained, and electrical systems are being damaged. Last spring the BBC came to an agreement with the architect and the contractor to patch this roof ... six years later!

This story also points to a more general problem not yet mentioned: the lack of professional pride in the design and construction of the Commonwealth's building work. A common feeling among contractors is that public building construction is second priority, that private work should receive all their energies, all their top management, all their good workmanship. State work does not require meeting schedules; in fact, it is okay to exceed deadlines by years, not just by months. It is not necessary that the quality be the highest; near enough is good enough. It is a sad fact that many excellent architects who practice in Massachusetts do not compete for the state's design commissions, and that many contractors who perform the finest quality work in the private sector do not build in the public one.

If state work weren't such a low priority, projects such as the Tower Building at Boston State College would never exist. Six months after construction began on the building, the user reassessed its needs and requested changes in the plans; because the available budget could not meet the newly realized needs, however, construction on the original design proceeded. In consequence, the top five floors of the Tower Building are unused. Although designed for a library, the unused space does not meet a library's basic requirements. In addition, the five floors are still tied into the HVAC system and are therefore heated in winter and cooled in summer. Most importantly, however, the Commission's technicians discovered that the building is a firetrap. For 13 floors, a gap of 6" or more exists between the structure and the external wall, a space that would act as a chimney flue in the event of fire.

Incompetent design and poor construction are the rule, not the exception, in the Commonwealth's buildings. With limited time and resources, the Commission found serious defects in nearly three-quarters of its sample of public buildings. Who can say what a more thorough investigation would expose? That the taxpaying public has provided the money for so many buildings that are unpleasant, inadequate, dangerous, and inordinately expensive is only part of the great disgrace. That the Commonwealth's system of public building construction fails to make those responsible fully accountable is just as discouraging.

The chapter following these remarks details responses to questionnaires sent to those in charge of the buildings the Commission investigated. Teams drawn from some 30 technicians also inspected each structure by its building subsystems, e.g., structural, mechanical, electrical, etc. The area use in each building was also checked: in school buildings, for example, technicians inspected every fifth classroom, every second bathroom, and so on. Superintendents and maintenance people were interviewed as well. Construction professionals reviewed the reports made by the technical teams, and in some cases experts in specific areas made follow-up visits to confirm defects.

Summary of State and County Building Construction: 1968-79

Construction costs between 1968 and 1979 for those state and county buildings identified and studied by the Commission total some \$2.036 billion.¹⁰ Total project costs -- i.e., construction costs plus one-third for non-construction costs (mainly design fees and furnishing costs) and another five percent for contingencies -- come to \$2.843 billion. The overall cost to the Commonwealth including financing and land was \$4.89 billion. These figures are not in 1980 dollars, but the value at time of contract award.

The figures in Table I provide a breakdown of construction costs by awarding authority for building construction from 1968 through 1979.

Table I
BUILDING CONSTRUCTION COSTS
BY AWARDING AUTHORITY,
COMMONWEALTH OF MASSACHUSETTS, 1968-79¹¹

AGENCY	TOTAL CONSTRUCTION COST
Bureau of Building Construction	\$ 886,900,000
Department of Community Affairs	364,600,000
Massachusetts Bay Transportation Authority	258,600,000
Massachusetts Port Authority	98,700,000
University of Massachusetts Building Authority	34,000,000
Government Center Commission	37,200,000
State Colleges Building Authority	33,500,000
Counties (pre-1972)	15,000,000
Southeastern Massachusetts University Building Authority	17,900,000
University of Lowell Building Authority	9,400,000
Massachusetts Turnpike Authority	6,900,000
*Miscellaneous	<u>272,900,000</u>
TOTAL	\$2,035,600,000

*Includes minor construction by state agencies normally administered by the BBC and self-administered MDC construction.

The \$2.036 billion in construction costs includes only those buildings and contracts the Special Commission's technical staff identified and studied. Structures customarily referred to as "public works" -- roads, bridges, parks, tunnels, sewers, railroad tracks, runways, ports, piers -- are excluded, as are the many construction-related programs that involve public financing of private development. Federal and municipal construction projects are also excluded even though they often are administered by the same bodies that oversee state-funded buildings. The cost of land purchase, feasibility studies, financing, and design are also excluded. For the purpose of this report, then, the term "state and county buildings" refers only to the construction of buildings paid for with state funds and at present owned, operated, and maintained by the Commonwealth, one of its 14 counties, or one of the semi-autonomous entities empowered to transact business on behalf of the Commonwealth.

"Construction cost" refers to the actual cost of new construction, renovations, and major non-recurring repairs. Normal maintenance, land purchase, design fees, and furnishing, planning, financing and development costs are not considered. All construction costs are based on the bid prices at the time the contracts were awarded and executed. For most of the data presented in this chapter, the Commission has used construction costs because such figures are nearly always available and are directly comparable. .

The state comptroller's fiscal 1980 Real Estate Inventory, "Buildings," indicates that there are some 4,800 state and county buildings, not including Department of Community Affairs (DCA) housing or the buildings of such autonomous agencies as the Massachusetts Bay Transport Authority and Massport. The Commission estimates that the total number of buildings is between 5,500 and 6,000. Based on the high level of state and county building construction activity during the late 1960s and early 1970s, a reasonable estimate is that roughly half of the existing buildings were built between January 1, 1968 and the present.

The Bureau of Building Construction (BBC) has jurisdiction over all significant state and county building construction and the buildings of the now defunct Government Center Commission. From 1968 to 1979, 43.6 percent of state and county construction activity (\$886.9 million worth) has been the BBC's responsibility. The DCA (17.9 percent) and the MBTA (12.7 percent) are the only other entities whose contract awards exceed 10 percent of the total.

State and county construction activity reached a peak in the years 1969 through 1971 when costs approached \$300 million annually. In 1972, annual costs decreased to \$207 million and continued to decline to less than \$87 million in 1975, the lowest level of construction activity. For 1979, however, total costs again approached \$155 million.

Table II gives the total building construction costs, as defined, for the calendar years 1968 to 1979.

Table II
BUILDING CONSTRUCTION COSTS
1968-1979
COMMONWEALTH OF MASSACHUSETTS ¹²

<u>Calendar Year</u>	<u>Cost</u>
1968	\$ 154,300,000
1969	217,700,000
1970	258,000,000
1971	288,200,000
1972	206,700,000
1973	159,100,000
1974	88,300,000
1975	86,300,000
1976	94,700,000
1977	94,000,000
1978	100,400,000
1979	154,900,000
No date	<u>122,000,000</u>
TOTAL	\$2,035,600,000

For most of the period the Commission investigated, building activity focused on new construction. At present, however, the state's goals for its building stock are primarily property management and maintenance of existing buildings. In mid-1980, nearly 90 percent of BBC projects were for repair or renovation; a decade before, in 1970, only a little over 40 percent represented work on existing buildings.¹³ From 1968 through 1974, new construction at institutions of higher education constituted the largest portion of public building activity. Because of expectations of lower enrollment, however, such building is not occurring today. Instead, the renovation of mental health facilities consumes the largest single share of the Commonwealth's construction budget. Once the Department of Mental Health completes this program in 1982, other agencies and functions will likely take over proportionally larger shares of the total construction budget. Among the major projects contemplated for the 1980s, for example, is the renovation of the Commonwealth's correctional institutions.

The current decline in new construction is expected to continue. The Commonwealth's resources will go more and more toward renovations to extend the useful lives of existing structures, conversions to adapt older buildings to new uses, and modifications to increase operational efficiency. Nonetheless, total construction expenditures will almost certainly rise, not only because of inflation, but also because of the urgent need to correct the many serious defects in state and county buildings constructed between 1968 and 1979.

Physical Condition of State and County Buildings Constructed from 1968-79

Because of the impossibility of directly examining all buildings completed since 1968, the Commission had to devise alternative means of gathering information on the physical condition of these structures. The intent was to gain an overview of the physical condition of the state and county building stock. An unbiased, objective picture was needed to guide any further investigation.

Three approaches were used. The first was self-evaluation: questionnaires were sent to all facilities under the purview of the BBC, MDC and DCA seeking voluntary responses from plant superintendents about the design, construction, and performance of those structures built or renovated since January 1, 1968 (see Appendix A, Sample Questionnaire). Because of possible biases in these responses, teams of technicians employed by the Commission then made on-site examinations of representative buildings under the supervision of professional consultants and Commission staff (see Appendix B, Fraudulent Practices in Public Building Construction Volume II). The procedures for investigations are summarized in the "Investigative Procedures" chapter of that report.

The Commission reviewed the state comptroller's payment records to collect data on construction contracts awarded since January 1, 1968. The Commission also conducted field interviews with building users and supervisors and interviews with architects, engineers and contractors at the Commission's offices. The Commission took testimony at public hearings from professional consultants and other experts.

Questionnaire Survey Procedures

In July and October 1979 and in August 1980, the Commission mailed 693 sets of questionnaires to all state and county facilities under the jurisdiction of the BBC and the DCA. Facilities built by counties before 1972 but now under the BBC were also included. Although Metropolitan District Commission (MDC) facilities also received questionnaires, their responses are not comparable to those from other facilities and therefore are not included in the figures reported here.

The 382 institutions receiving questionnaires represent 74.9 percent of state and county building construction from January 1, 1968 through December 31, 1979, as defined above. An institution is any facility that is a separate administrative unit encompassing one or more buildings. District courthouses are institutions that typically consist of a single building, whereas state colleges are examples of multi-building institutions. Local housing authorities are single institutions since a central office handles all state-funded buildings.

Of the 287 institutions that acknowledged receiving the questionnaire, 47 either had no buildings under their control or had no construction since January 1, 1968, while 54 provided no useful information. The 186 institutions that provided valid, informative responses cover 576 construction projects or an estimated 2900 construction contracts and an estimated 1090 buildings. The responses represent 48.7 percent of the institutions receiving questionnaires and 36.5 percent of state and county building construction since January 1, 1968.

For purposes of the questionnaire, a project is defined as any construction job taking place over a continuous span of time and having a specific objective (e.g., the construction of new buildings, the repair of a leaky roof, the replacement of all windows within a building or set of buildings). Such a project may result from one or more contracts; in this section, there are no cases where single contracts have been split into multiple projects. Similarly, a project may consist of one building or a number of buildings under one construction contract.

In compiling the data, the Commission used a cutoff date of December 31, 1979. All new construction, renovations, institutional site work, and non-recurring repairs are covered. The results pertain only to severe structural, mechanical, and functional defects in construction that impair the usefulness or safety of structures subject to the Commission's mandate. Not included are problems associated with vandalism, improper operating or maintenance procedures, aesthetic complaints, mistakes in planning, and acts of God.

Although the Commission's questionnaire also attempted to elicit information on operating and maintenance costs of state and county buildings, a breakdown of such costs was impossible to acquire. As employed by the great majority of institutions surveyed, the Commonwealth's accounting system simply does not allow for detailed itemization (see Appendix A, Sample Questionnaire for User Facility).

Analysis of Questionnaire Responses

The terms "failure rate" and "severe defects" cover a wide range of physical problems in buildings. Many are the result of poor planning, incompetent design, inferior and possibly fraudulent construction practice and negligent supervision. A structural flaw that threatens the safety of a building and results from incompetent design or inferior construction is a severe defect. Similarly, building areas that are unusable because of design errors are covered by the phrase "failure rate."

Seventy-six percent of the institutions providing valid, informative responses to the questionnaire reported severe defects in their projects. The institutions with major projects, i.e., all new construction and all renovations costing \$1 million or more, found severe defects in 54 percent of their buildings. The failure rate for major BBC construction projects since 1968 is 72 percent; the DCA's is 41 percent.

A summary of the user questionnaire responses, divided into DCA- and BBC-administered construction projects, is given in the following table:

Table III

SUMMARY OF USER QUESTIONNAIRE RESPONSES:
COMBINED TABULATION OF RESULTS OF MAILINGS OF JULY AND OCTOBER 1979
AND AUGUST 1980

	DCA Housing Authorities	BBC & COUNTY	TOTALS	PERCENTAGES
Number of Institutions Receiving User Questionnaire	---	---	382	---
Total Returns	168	119	287	75%
Inapplicable Replies*	(25)	(22)	(47)	
Valid Informative Replies	110	76	186	48.7%
Valid. Informative Replies Reporting Severe Defects	99 (90%)	43 (56%)	142	76.3%
No. of Projects Mentioned in Reports	158	418	576	---
New and Major Construction Projects Mentioned in Reports	132	97	229	38%
Major Projects with Severe Defects	54 (41%)	70 (72%)	124	54%

*Includes new construction in progress

NOTE:

1. Tabulations include all DCA, BBC, and local county building construction; MDC construction is not included.
2. Tabulations include projects built from 1/1/68 to 12/31/79.
3. See text for definitions of "institution," "project," and "defect" as used here.

The numbers of reported severe defects by building sub-system or category are presented in Table IV.

Table IV

SUMMARY OF USER QUESTIONNAIRE RESPONSES:
INCIDENCE OF REPORTED SEVERE DEFECT
BY CATEGORY OF DEFECT

CATEGORY OF REPORTED PROBLEMS	NUMBER OF REPORTED SEVERE DEFECTS
Financial	7
Site work	16
Concrete	12
Structural Metal	0
* Masonry	36
* Roofing and Flashing	68
* Metal Windows	7
* Waterproofing and Caulking	6
* Glass and Glazing	15
* Misc. and Ornamental Iron	0
Ferrous and Non-Ferrous Metals	0
Building Specialities	10
Metal Doors and Frames	0
Lathing and Plastering	0
* Acoustical Tile	0
Carpentry	18
Finish Hardware	9
* Marble	0
* Tile	0
* Terrazzo	0
* Resilient Floors	8
* Painting	0
* Plumbing	21
* Heating, Ventilation and Air Conditioning	40
* Electrical	25
* Elevators	3
Other	5

*Indicates filed subcontracts

Given the self-selecting nature of the questionnaire, the results may give a conservative view of the extent and severity of building defects. In the buildings the Commission actually inspected and studied in detail, the severe defect rate is 74 percent. It is noteworthy that many buildings that were ultimately the subjects of the Commission hearings on bad construction, inadequate construction management, and faulty design are among the institutions that did not respond to the questionnaire. These include Boston State College, Cape Cod Community College, and UMass/Amherst.

Statistics, however, do not provide an adequate picture of the physical condition of the Commonwealth's building stock. Far more eloquent are the statements of the building administrators, managers and maintenance personnel who responded to the questionnaires. For example, R. Bachand, Executive Director of the Somerset Housing Authority, reports:

This facility does not meet the needs for which it was designed. We are experiencing continual water intrusion and other building defects. These problems are the result of poor workmanship and improper materials. In closing, E. MURPHY VILLAGE [consisting of 17 separate buildings] will always be a high maintenance project because of the type of construction and its deficiencies.14

Continual water intrusion was a complaint recurring in 68 incidents of severe defects. The water intrusion was through "roofs that have been improperly built"; "through considerable cracking in external walls"; "through waterproofing and flashing that does not appear to be properly designed or installed"; and "through windows incorrectly fitted and caulked".

In 40 incidents of severe defects, the buildings' heating, ventilation and air conditioning (HVAC) systems revealed such problems as "insufficient air flows due to nature of duct installation and ... insufficient fan capacity." Other users report that "heating pipes continually freeze over in winter causing the heating system to be shut down"; and that "despite considerable work and expense [on the HVAC system] ... relief was not forthcoming".

External masonry walls (36 incidents of severe defects) were reported to be "showing extensive cracking that is causing water penetration"; to be "deteriorating to the extent of bricks coming loose"; and "appear to be failing structurally."

In 25 incidents, faulty electrical systems have caused "lights in the operating room to fail after ten minutes"; or have "considerable wiring, lighting and circuit loading that do not meet state codes". One respondent states that "smoke detectors came loose; fire-exit signs fell from ceiling brackets; defective equipment or installation caused several false alarms."

Other complaints focus on plumbing systems (21 incidents of severe defects) where there is "hot water in [toilet] flushing system"; where, "sewage pipes are continually blocking"; where "space units mixing hot and chilled water through three-way valves do not operate properly ... [and] pressures on the two separate systems are unbalanced thus overriding thermostat controls"; and where "roof drains and traps are filled with indissoluble building refuse that can not be cleaned out."

Conditions other than those classified as "severe defects" but causing inconvenience to users are very numerous. Referring to carpentry and door hardware, one user stated: "The work is very poor in quality and many [door] locks simply do not work. Locks appear loosely installed ... screws were missing or falling out." Referring to a cooling system, a respondent wrote that "the pumphouse, piping, pumps, etc. that use sea water for cooling have corroded." Costly x-ray equipment in an operating room of one hospital remains unused and the incinerator "has gone month after month not being in proper running condition."

The questionnaire results clearly indicate that the majority of the Commonwealth's buildings have physical defects and problems. To obtain a better understanding of these defects and why they occur, teams of technicians supervised by construction experts were sent to investigate selected buildings.

Technical Investigation and Inspections

Members of the Special Commission's technical staff visited 65 building projects, many of which are single buildings and single building contracts. Projects such as Cape Cod Community College that are made up of several buildings or building contracts have been grouped together because of a common using agency, awarding authority, designer or general contractor.

The site visits and inspections by construction technicians, Commission staff members, and outside experts were intended to document construction and design defects in representative buildings and to seek evidence of construction fraud (see Appendix B, Fraudulent Practices in Public Building Construction Volume II for investigative procedure). Table V lists the number of projects that the Commission investigated by building type.

Table V

INSPECTED BUILDING PROJECTS BY BUILDING TYPE

<u>Building Type</u>	<u>Number of Building Projects</u>
Housing	17
Multi-use Academic	17
Hospitals	6
Courthouses	5
Libraries	6
Mechanical Plants	3
Dining Facilities	1
Prisons/Jails	3
Parking Structures	2
Office Buildings	1
Gymnasiums	2
Auditoriums	1
Athletic Fields	1
	<u>65</u>

In Table VI, the representative building projects are broken down by awarding authority.

Table VI

INSPECTED BUILDING PROJECTS BY AWARDING AUTHORITY

<u>Awarding Authority</u>	<u>Number of Building Projects</u>
Bureau of Building Construction (excluding counties)	36
Department of Community Affairs	17
Counties	8
UMass Building Authority	2
Department of Public Works	1
Regional School District	1
	<u>65</u>

Building projects inspected are classified by using/owning agency in Table VII.

Table VII

INSPECTED BUILDING PROJECTS BY USING/OWNING AGENCY

<u>Using Agency</u>	<u>Number of Building Projects</u>
Local Housing Authorities	16
University of Massachusetts	13
State College System	11
Board of Regional Community Colleges	9
Counties	8
Department of Mental Health	3
Department of Public Health	2
Department of Corrections	1
Town	1
Region	1
	<u>65</u>

Analysis of Technical Investigative Results

Severe defects were found in 74 percent of the building projects that the Commission inspected. The problems encountered include such conditions as a building's structural system failing to the extent that life is threatened; external walls peeling off the buildings; brick walls that are cracking, are structurally unsound, and allow excessive water intrusion; roofs that collect water and direct it to building interiors; heating systems that freeze in winter; cooling systems that are corroded and do not function in summer; ventilation systems that do not provide air exchanges or that conduct foul air to other parts of a building; undependable electrical systems that cause lights and hospital operating machinery to fail; fire detection systems that do not function; and building areas that are unusable because of improper architectural and structural designs. When less serious conditions are included, 91 percent of buildings inspected suffer from construction defects.

The summary in Table VIII indicates the number of building projects inspected by technical staff and professional experts, the percentage of these projects responding to the questionnaire, the number of building projects with severe defects (as previously defined) and the number of building projects with defects. A full written report was submitted on each inspection, and photo documentation is on file for 38 of these building projects. (See Appendix C, Sample Technicians Report).

Table VIII

BUILDING PROJECTS INSPECTED BY TECHNICAL STAFF

Number of Building Projects Inspected	Number Responding to Questionnaire	Number with Severe Defects	Number with Defects	Photographic Documentation
65	28 (43%)	48 (74%)	59 (91%)	38

Because it is important to record which building projects were inspected, and by whom, Table IX lists the names of projects inspected; whether they are covered by the analysis of questionnaires; and whether they were visited by the Special Commission's technical staff and/or professional consultants.

- TABLE IX

SUMMARY OF BUILDINGS INVESTIGATED BY
TECHNICAL STAFF AND PROFESSIONAL CONSULTANTS 15

<u>FACILITIES & BLDGS. INSPECTED</u>	<u>QUESTIONNAIRE RESPONSE</u>	<u>VISITED BY SP. COMM.</u>	<u>STUDIED BY PROF. CONSULT.</u>
Essex; Peabody Courthouse	No	Yes	-
Norfolk Admin. Bldg.	No	Yes	Woollett
Worcester			
-Dudley Courthouse	Yes	Yes	Spaulding
-Gardner Courthouse	No	Yes	-
-Uxbridge C.H.	Yes	Yes	Spaulding
-County Jail	Yes	Yes	Kenney, Woollett Allstate Roofing
Plymouth: County Hingham Crt.	No	Yes	-
Haverhill Parking Deck	No	Yes	Woollett, Deveney Edw. & Kelcey, Thornton, ICO
Whittier Voc. Tech. H.S.	No	Yes	Simpson, Gumpertz
Abington H.A.	No	Yes	Digby (BBC)
Amesbury H.A.	Yes	Yes	Deveney, Kenney, S.C.I.
Boston H. A. Pine St. Inn	Yes	Yes	C.B.T.
Cohasset H.A.	Yes	Yes	Woollett, Deveney
Duxbury H.A.	Yes	Yes	Deveney, Dempsey
Fall River H.A.	No	Yes	-
Leicester H.A.	Yes	Yes	-
Leominster	No	Yes	Deveney, Kenney
Melrose H.A.			
-McCarthy	No	Yes	Kenney, Woollett, Deveney, Simpson Gumpertz, C.B.T., Thompson & Lichtner
-Steele	No	Yes	Sears Read Kenney, Woollett
Northbridge H.A.	No	Yes	-
Oxford H.A.	No	Yes	-
Pembroke H.A.	No	Yes	-
Randolph H.A.	No	Yes	K.F. Parry
Taunton H.A.	Yes	Yes	Spaulding
Watertown H.A.	No	No	-
Boston State Hosp.	Yes	Yes	-
Fernald Hosp. School	No	Yes	-
MCI-Concord	No	Yes	-
Pondville Hospital	Yes	Yes	-
Shattuck Hospital	Yes	Yes	-

Cape Cod C.C.			
-Sci. Bldg.	No	Yes	EDG, Deveney
-Library	No	Yes	Woollett, C.B.T.
-Commons	No	Yes	S.C.I.
-Gym	No	Yes	
-Auditorium	No	Yes	
Holyoke C.C.	Yes	Yes	-
Massasoit C.C.	No	Yes	-
Mt. Wachusett			
-Main	Yes	Yes	Allstate Roofing
			Woollett
-F.A. Wing	Yes	Yes	Woollett
Bridgewater S.C.			
-Library	Yes	Yes	Woollett
-Fields	Yes	Yes	B.S.B., Deveney
			Woollett
Boston State College			
-Renovation	No	Yes	-
-Tower	No	Yes	Deveney, Woollett
Framingham S.C. Center	Yes	Yes	Deveney, Digby
Mass Coll. of Art	Yes	Yes	-
Salem State College			
-Library	Yes	Yes	Deveney
-Arts & Science	Yes	Yes	Woollett, S.C.I.
-P.E. Center	Yes	Yes	Deveney
Worcester S. College			
-Library	Yes	Yes	-
-Stu. Union	Yes	Yes	-
UMass Amherst			
-Center	No	Yes	C.E. Maguire,
			Stone, Simpson-
			Gumpertz
-Library	No	Yes	Small, Agnoli,
			Woollett
-Garage	No	Yes	C.T. Main
-Tillson Farm Power Plant	No	Yes	Loomis & Loomis
-Residences	No	Yes	W.F.E.M. & Co.
UMass Boston			
-090 Library	Yes	Yes	{ Schoenfeld, Steco,
-080 Science	Yes	Yes	
-020 Academic	Yes	Yes	
-010 Academic	Yes	Yes	
-160 HVAC Bldg	Yes	Yes	{ Battelle
UMass Worcester			
-B Bldg	Yes	Yes	Columbus Lab,
(School)-C Bldg	Yes	Yes	Main, SCI,
			Helden, Simpson-
			Gumpertz
(Hospital)-D Bldg	Yes	Yes	Kenney
S.E. Mass. University	No	Yes	Woollett
			SCI
			-
			-

For each project visited, the Commission's technical staff compiled a detailed report indicating the nature of the defect, the building superintendent's explanation of the problem, photographic evidence of the defect where possible, and any other observations that may be of interest. Categories of defects, following the Construction Specification Index standard for building construction and the BBC requirements for building specifications, are presented in Table X. This table also includes the number of building projects that had severe defects in each category, and the percentage of total buildings visited containing these defects.

Table X

SUMMARY OF SEVERE BUILDING DEFECTS
BY CATEGORY OF DEFECT

<u>Category Of Defect</u>		<u>Number of Buildings With Severe Defects</u>	<u>Percent of Buildings With Severe Defects</u>
1	Financial Problems	3	5%
2	Site Work	1	2%
3	Concrete	11	17%
4	Structural Metal	9	14%
5	*Masonry	20	31%
6	*Roofing and Flashing	26	40%
7	*Metal Windows	11	17%
8	*Waterproofing and Caulking	2	3%
9	*Glass and Glazing	1	2%
10	*Misc. and Ornamental Iron	-	0%
11	Ferrous and Non-Ferrous Metals	-	0%
12	Building Specialities	4	6%
13	Metal Doors and Frames	-	0%
14	Lathing & Plastering	-	0%
15	*Acoustical Tile	-	0%
16	Carpentry	1	2%
17	Finish Hardware	1	2%
18	*Marble	-	0%
19	*Tile	-	0%
20	*Terrazzo	-	0%
21	*Resilient Floors	1	2%
22	*Painting	-	0%
23	*Plumbing	7	11%
24	*HVAC	16	25%
25	*Electrical	5	8%
26	*Elevators	1	2%
27	Other	3	5%

*Indicates filed subcontract categories

Using these categories of defects, Table XI summarizes the findings of the Commission's technical staff and professional consultants. See pages 19A - 19C.

Building Defects by Category

In 40 percent of the buildings inspected, serious defects in roofing and flashing caused abnormal water intrusion. The Worcester County Jail, Mt. Wachusett Community College, Boston State Hospital, Lemuel Shattuck Hospital, and Bridgewater State College library are all typical of this problem. These projects experienced severe water penetration due to leaking roofs and walls, often before construction was completed. When asked by the Commission's technical staff about the roof on one building, a building superintendent replied, "This roof is nothing out of the ordinary. It functions the same as the roof on all our other buildings. They all leak like sieves. So, what's new?"

The hazards and inconvenience caused by continual water intrusion are enormous. At Mt. Wachusett Community College, staff are continually placing buckets under dripping ceilings, removing destroyed acoustical ceilings, and repairing damaged walls. At Salem State College, the roofs of three new buildings leaked when the buildings were occupied; repeated repairs and constant

TABLE XI

SUMMARY OF TECHNICAL STAFF AND CONSULTANTS REPORT
OF BUILDING DEFECT BY CATEGORY

<u>FACILITIES AND BUILDINGS</u>	<u>SUMMARY OF TECHNICAL REPORTS</u>	<u>SUMMARY OF CONSULTANT REPORTS</u>	<u>CATEGORY OF SEVERE DEFECTS</u>	<u>CATEGORY OF MINOR DEFECTS</u>
Essex Peabody Court House Norfolk Admin. Building	Minor problems. Masonry, roofing, HVAC problems.	- Minor problems still on check list.	- 5,6,24	2,7,24 17,22
Worcester County- Dudley Courthouse Gardner Courthouse	Good except brickwork. Good except millwork substitution.	Brickwork as specified. Substitution in bookshelves.	- -	6 6,16,17,24
Uxbridge Courthouse Jail	Good except brickwork. Bad concrete, leaking roof, flashing.	Brickwork as specified. Incorrect placing of concrete, cracking concrete, flashing, roofing.	- 3,6,24	6 13,17,22
Plymouth -Hingham Courthouse Haverhill - Parking deck	No problems. Structural defects, work stopped.	- Structural design, reinforcement and post-tensioning placement.	- 3	1,2 -
Whittier Vocational Tech. High School Abington Housing Auth.	Leaking roof, structural problems. Minor problems.	Design and installation of roofing. Substitution of grade of timber used.	3,6 16	2 -
Amesbury Housing Auth. Boston - Pine St. Inn Cohasset Housing Auth.	Minor problems. No problems. Walkways, timber framing and sheathing.	No significant problems. - Wood construction poor, paving and walkways poor.	- - -	3,5 - 2,6,16,21
Duxbury Housing Auth.	HVAC, plumbing, overpayment.	Questions design, overpayment to general contractor.	1,24	23
Fall River Housing Auth. Leicester Housing Auth. Leominster	Minor roofing problem. Minor masonry problem. Concrete problem.	- - -	- - 3	6 5 -

FACILITIES AND BUILDINGS	SUMMARY OF TECHNICAL REPORTS	SUMMARY OF CONSULTANT REPORTS	CATEGORY OF DEFECTS	
			SEVERE DEFECTS	MINOR DEFECTS
Melrose Housing Auth.: -McCarthy Apartments	Serious structural and roofing problems.	Omissions in reinforcing steel electrical conduit; substitution of mortar, roof, tile, carpet. Not available.	3,5,6,7	17,19,21,22
-Steele House	Serious masonry and structural problems.		4,5	3,17
Northbridge Housing Auth.	Minor masonry problems.	-	-	5
Oxford Housing Auth.	Minor masonry problems.	-	-	5
Pembroke Housing Auth.	Under construction.	-	-	-
Randolph Housing Auth.	Roof leaks, concrete problems.	Omission, waterproofing, structural design by contractor.	5,6,8	24
Taunton Housing Auth.	Cracking masonry, roof repairs.	Brickwork as specified.	-	5
Watertown Housing Auth.	Financial.	-	1	-
Boston State Hospital	Roof leaks at parapet flashing.	-	6	16,17,21
Fernald School - Hospital School	Nine buildings with overhead plumbing leaks.	-	23,24	17
MCI Concord	Design, ventilation and security problems.	-	6,17,21,24,12	4
Pondville Hospital	Electrical installation and equipment problems.	-	23,24,25,12	23
Lemuel Shattuck Hospital	HVAC and roofing problems.	-	6,24,12	-
Cape Cod Community College: -Science Building	Design and construction failures in: masonry, structure, flashing, roofing and gutters.	Design deficiencies, compounded by poor workmanship, caused concrete cantilever failure, cracking brickwork, water intrusion through walls, parapets and roof.	5,6,7,4 5,6,7,4 5,6,7,4 5,6,7,4 5,6,9,4	- 1,7 16,17 22 -
-Library				
-Commons				
-Gymnasium				
-Auditorium				
Holyoke Community College	Skylights, concrete problems.	-	12,25	7
Massasoit Community College	Roof leaks.	-	6,24	-
Mt. Wachusett Comm. College: -Main	Roof leaks, masonry problems.	Roof installed wet, blistering of roof, one layer felt.	6	8,5
-Fine Arts wing	No problems.	No problems.	-	-
Bridgewater State College: -Library	Roof leaks.	Poor roofing installation.	6	-
-Playing fields.	Wet playing fields, sub-grade substitution.	Deviation from specifications in subgrade, drainage, and topsoil.	2	-

FACILITIES AND BUILDINGS	SUMMARY OF TECHNICAL REPORTS	SUMMARY OF CONSULTANT REPORTS	CATEGORY OF SEVERE DEFECTS	CATEGORY OF MINOR DEFECTS
Boston State College: -Renovation -Tower Building	No problems. Design errors, fireproofing, HVAC problems.	-	7 3,5,24	- 5,17,19,26
Framingham State College Student Center	Masonry, roofing, metal windows, HVAC, electrical problems. Fire alarm installation.	-	5,6,24,26	21
Mass. College of Art Salem State College:		-	25	-
-Library -Arts & Science -Phys. Ed. Center	Classroom wing hazardous, major roof problems, masonry problems.	Structural design inadequate. Masonry and flashing installation poor.	3,4,5,6 3,4,5,6 3,4,5,6,23	Many Many Many
Worcester State College:	Water, HVAC problems. Boiler malfunction.	- -	5,6,7,24 6,7,23	3,25 -
-Library -Student Union UMass/Amherst: -Campus Center	Elevator malfunction, roof leaks. Brick panels.	-	6	26
-Library		Design or construction errors in angle supports for masonry panels.	5	-
-Garage	Design of reinforced T-beams.	-	3	-
-Tillson Farm Power Plant	Expansion joints, sleeves, tie-line problems.	-	23	-
-Residences	Masonry problems, roof leaks.	-	24,25	Many
UMass/Hoston:	Roof leaks, bricks failing. 3-way valves failing. Roof leaks, interior damage. Roof leaks, HVAC problems. Waterproofing, seawater exchange.	Design, construction and maintenance failures.	5,6 23 6 6,24 8,23,24	- - - - -
UMass Med. Sch., Worcester:		-	5,7	6,12
-B Building	Roof problems.	-	3,5,7,24,25	6,14,19,26
-C Building (School)	Water intrusion, HVAC, electrical problems.	-	5,7,24	25,24
-D Buidling (Hospital)	Smoke alarms, electrical problems.	-	12	-
Southeastern Mass. Univ.	Swimming pool design and installation.	-	2,4,8	
Institute of Labs	Design of ventilation, waterproof electrical switch room.			

maintenance have failed to solve the problems, and sub-surface materials now have degenerated to a point where complete reroofing is necessary. Over \$500,000 has been spent on patching one roof alone.

Thirty-one percent of the buildings inspected have serious masonry problems. These defects range in severity from conditions at the Steele Building of the Melrose Housing Authority, where all the exterior brick work has had to be replaced at a cost of \$2 million, to the cracking of masonry at the Taunton housing for the elderly project. Many of the buildings are structurally suspect because of masonry defects and/or cannot prevent water penetration through masonry walls, e.g., McCarthy Apartments, Cape Cod Community College. Many other buildings have unsightly facades due to defective brick work.

Of the 65 buildings inspected, 25 percent also had serious problems with their heating, ventilation and air conditioning systems. In 11 of these buildings, the HVAC system did not work because of such defects as inadequate and improperly designed distribution systems, improper location of thermostat controls, under-powered equipment, and improperly installed and adjusted components. In the Department of Public Health's Institute of Laboratories in Boston, improper design and installation of the ventilating system have led to fears that researchers might be exposed to dangerous organisms or that such organisms might "leak" out of the building. All work with dangerous diseases thus takes place at another location. At Lemuel Shattuck Hospital, two renovations of the air conditioning system were unsuccessful; a third contract to repair these repairs finally resulted in a correction of the problems, but only after nearly ten years and a cost of approximately \$2 million.

Evidence of failure of structural concrete elements was found in 17 percent of the building projects inspected. The more dramatic examples of this category of defects are the Haverhill parking deck where construction has stopped due to excessive cracking of the partially built structure; the McCarthy Apartments in Melrose where temporary shoring is used to support the structure; and Cape Cod Community College where concrete cantilevered slabs are supported on temporary shoring; and the State Laboratory Institute where a connecting bridge was declared unsafe by the Department of Public Safety. At the Amesbury housing for the elderly and Leominster housing projects, water intrusion is the result of defective concrete work.

In 17 percent of the buildings, defective windows and glazing have caused serious problems of water and air infiltration. The fully glazed curtain wall, forming most of the exterior shell of the College Center Building at Framingham State College, leaks copiously in at least ten locations. At the Boston Housing Authority's Pine Street Inn, all parties agreed to accept non-certified windows

that were of non-standard size and thus did not fit the window openings; architectural adjustments were made to accommodate them. These windows have leaked extensively since they were installed, and replacement with standard windows is now a necessity. In a UMass/Amherst dormitory, all window gaskets had to be replaced one year after the building was completed.

Systemic Defects Observed in Technical Investigations

Most defects observed by the technical investigators can be summarized as the result of:

- o the designs' not fulfilling the functional requirements of the buildings' users;
- o the designs' (architectural, structural, mechanical, plumbing, and electrical) being inadequate and, at times, grossly incompetent;
- o the buildings' being poorly built by contractors;
- o inadequate supervision of building construction by the Commonwealth and the designer;
- o negligent administration of construction contracts by designers and the Commonwealth;
- o buildings being accepted by the Commonwealth when they have serious defects.

The following are examples of designs that do not satisfy functional requirements. Built at a cost of \$15 million, the five floors intended for use as a library in the Tower Building at Boston State College remain unoccupied. In the auditorium of the same building, the stage cannot be seen from balcony seating. In the Boston State Laboratory Institute, the ventilation of the area designed for research on contagious diseases is not isolated from the rest of the building. A new incinerator at Pondville Hospital requires that trash be hand-sorted for glass and cans; it has not been used since 1978.

Examples of inadequate and grossly incompetent design are numerous. Many defects threaten the safety of the building users and the public. The professional consultant's report on the McCarthy Apartments in Melrose states, "We identified several areas where the structural design was found not to be in conformance with code requirements ... [the building] has the potential for serious structural damage and possible collapse."¹⁶ The consultant's report on the Salem State College library building indicates that "the provisions of the American Concrete Institute (ACI) Code that have been violated [by the building] include the allowable shear stress in concrete, the moment capacities of the concrete sections, the torsional capacities of the beams, and the spacing of the ties in the columns."¹⁷ Almost all structural elements of the building fail to meet the design codes.

The Tower Building at Boston State College was described as a "potential towering inferno" because of the architectural design that allows a six-inch space between the curtain wall and the building structure.¹⁸ In the event of a fire, this space will act as a chimney to spread fire throughout the building. Defective electrical systems and equipment at Pondville Hospital are partially a result of incompetent electrical design.

In most of the buildings inspected and in virtually all buildings with severe defects, evidence exists of poor construction methods, bad workmanship and substandard construction practices by subcontractors and general contractors. The more serious instances of poor construction can threaten the safety of the building occupants as at the McCarthy Apartments. On the Norfolk County Administration building, a county official wrote, "The workmanship contained in this building is not only outlandish, but downright negligent. ... The building is totally unacceptable.... This building is a public disgrace."¹⁹ Building projects, such as the Worcester County Jail, Whittier Vocational Technical High School, Amesbury Housing for the Elderly, Randolph Housing Authority, Lemuel Shattuck Hospital, Mount Wachusett Community College, Framingham State College, Massachusetts College of Art, Worcester State College library, and the University of Massachusetts at Amherst residences all exhibit poor workmanship and bad construction by contractors that have resulted in building defects. A consultant's report on the McCarthy Apartments at Melrose states: "the manner in which the flashing was installed causes much more of a leakage problem than it prevents ... the picture clearly shows a complete disregard for good workmanship."^{19A}

Another consultant's report on the same building states:

The total roofing installation reflects poor workmanship throughout:

- a. The roof is spongy and bouncy.
- b. The adhesive is continuing to deteriorate the substrate layers of fecco board and polystyrene insulation.
- c. The roofing system is not adhered as required, and has bubbles, etc., throughout.
- d. The fascia flashing is not accurately attached and its fabrication, installation and attachment is flimsy.
- e. The system contains an inordinate amount of patches.
- f. The installer did not plan his work to use the largest possible size sheets minimizing laps and patches.
- g. The roof drain covers are not secured to the roof drains.
- h. The roofs are not properly pitched to the roof drains with standing water in many areas.
- i. There are large voids in the substrate system directly below the P.V.C. roof layer.

- j. The fascia system is not as recommended by the Manufacturer. The Manufacturer recommends the installation of its Sarnafil Flashing system allowing for the bonding of the P.V.C. sheet to the flashing, for positive sealing.
- k. The installation of the pipe rails into the sleeves does not reflect the best workmanship. The P.V.C. flashing is mechanically attached to the sleeve with a metal clamp. The surface of the pipe sleeve allows for standing water to ultimately work its way into the building.
- l. A brief inspection of the seams indicates leak potential. Ordinarily, questionable seams such as observed by Fogel & Associates, Inc., are subjected to a 'needle probe' type of inspection to assure that they do not continue beyond the lower layer. We question if any 'needle probes' were made because standard practice dictates that even those questionable seams are rewelded for positive bonding.
- m. The unadhered and unballasted roofing system as well as the fascia flashing present a threat to public safety. The roof is subject to wind uplift and the fascia system is a potential missile. The corners and ends of the fascia system are not positively secured; many are blowing in the wind and can easily be blown away from the building by high winds.²⁰

That this poor workmanship and bad construction is allowed to occur is a condemnation of the way both the Commonwealth and individual designers supervised the project. Technical reports on the Worcester State College Learning Resource Center state:

The construction supervision on this building appears to have been non-existent. The result is a building with incredible water damage that combined with the HVAC problems, the numerous water problems have rendered the building quite unpleasant to inhabit. In addition to the ugliness of the water damage, some of it has been so extensive as to render certain rooms unsafe for occupancy with the result that the building has not been able to perform as intended. With additional rooms being rendered useless during repair work, it is not difficult to regard this building as a liability to the college.²¹

At the Hingham District Courthouse in Plymouth, the presiding judge apparently supervised construction through default of the Commonwealth and the designer. Judge Tamkin related how he had to "often rush from the bench to prevent the contractor substituting inferior materials." The Judge accused the contractor of using "intolerably shoddy practices."²²

Negligent administration of construction contracts also led to severe defects at the University of Massachusetts Tillson Farm project at Amherst. At the Duxbury Housing Authority, the contractor was overpaid for work done, then walked off the project, leaving defective plumbing and building finishes. About the Norfolk County Administration Building, a county official states:

The project is now more than two years behind schedule and has cost the taxpayer an enormous amount of money for a building which is still in a wretched condition.

I respectfully request that you take immediate measures to force the BBC and all other parties to complete their responsibility to the county.²³

Systemic problems have been compounded by the Commonwealth's acceptance of building projects with obvious defects. Although the building superintendent at Bridgewater State College advised against the decision, the playing fields were accepted as complete and have since been unusable at times. Against the advice of the chief engineer at Lemuel Shattuck Hospital, the Commonwealth accepted the mechanical systems as satisfactory; these mechanical systems are still defective.

At Framingham State College, the director of facilities noted the following defects in the College Center Building: coil freeze-ups occur in the HVAC system because of the location and inadequate insulation of the coil units; the parquet floor in the forum area has lifted in many locations because of failure of the adhesive; leaks occur throughout the perimeter roof flashing; and the window walls leak profusely, especially along the south side.²⁴

A quote from a county administrator to the BBC summarizes what was found in many of the building projects inspected:

If anyone should not have been paid in full it is the roofing contractor. The new roof continually leaks and nothing has been done to correct it. Having certified that this work was satisfactory over a year ago, one wonders whether the problem will even be corrected by him.²⁵

Building Defects and Filed Subcontractors

During the period of the Commission's mandate, the Commonwealth has used a "filed sub-bid" system. Subcontractors wishing to do public work in any of 17 subcontract areas submit bids from which contractors must choose in making up their own bids. General bids are composed of the prices submitted by the chosen filed sub-bidders and the general contractors' prices.²⁶

Although general contractors are not required to select the lowest bidder in any filed sub-bid category, nearly all subcontractors who have done state and county work have been the lowest sub-bidders on a particular project.²⁷ This systematic bias in favor of low initial cost mitigates against any general contractor selecting other than a low filed sub-bidder, despite experience and past performance. Even if a general contractor includes, in his successful bid, a filed sub-bidder who is not the lowest in the category, Massachusetts contract awarding authorities (notably the BBC and the UMass Building Authority) often request that the winning general contractor substitute the lowest sub-bidder for the more expensive one.

Since filed subcontractors have performed work representing 53 percent of total BBC construction costs between 1968 and 1979,²⁸ the defective condition of much of the Commonwealth's state and county buildings can be attributed to filed sub-bidders. All figures developed by the Commission indicate that work within the trades subject to the filed sub-bid law went to a relatively small

number of firms. Furthermore, in almost every trade, an even smaller group of subcontracting firms shared the vast majority of subcontracts and most of the total dollar value. For example, 168 BBC contracts, from 1968 to 1979, included filed sub-bids for roofing and flashing, for a total bid price of \$8,190,045. Of the 458 roofing and flashing firms operating in Massachusetts, only 34 actually worked on these jobs. Only eight of these 34 firms (less than two percent of the roofing and flashing firms in the state) received 72 percent of the total subcontracts, representing 81 percent of the total dollar value.²⁹

Statistics in Table XII for other filed sub-bid categories indicate that much filed sub-bid contract work that is defective has been performed by a limited number of subcontractors. Subcontracting firms responsible for serious construction defects in the past, however, continue to receive contracts. For example, Columbia Cornice, Inc., a roofing and flashing subcontractor, performed eleven major state roofing jobs between 1968 and 1977; five of these roofs have severe defects, problems that were apparent before construction was completed.³⁰ Table XII gives the distribution of filed subcontract work and the percent of that work found defective in buildings inspected.

Table XII

DISTRIBUTION OF DEFECTIVE FILED SUBCONTRACT WORK BY CATEGORIES OF WORK
FROM JANUARY 1968 TO DECEMBER 1979³¹

Trade Category	Total Value of Filed Subcontracts	Number of Filed Sub- contractors Doing BBC Work	Percent of Total Value of Filed Subcontract Work Performed by Limited Number of Subcontractors		Percent of Buildings Inspected with Severe Defects
			Percent of Total Value of Work	No. of Sub- contractors Performing Work	
Roofing & Flashing	\$ 8,190,045	34	81%	8	40%
Masonry	\$ 47,352,830	127	90%	36	31%
HVAC	\$107,344,102	104	82%	21	25%
Metal Windows	\$ 11,831,858	41	70%	5	17%
Plumbing	\$ 42,266,852	96	84%	21	11%
Electrical	\$ 81,047,948	136	66%	20	8%
Weather, Damp- proofing, and Flashing	\$ 5,556,052	32	67%	10	3%
Elevators	\$ 9,615,874	14	65%	4	2%

Glass & Glazing	\$ 6,332,689	39	83%	10	2%
Resilient Floors	\$ 2,978,148	20	78%	3	2%
Misc. & Orn. Iron	\$ 7,169,044	44	71%	10	0%
Acoustical Tile	\$ 6,401,457	31	81%	9	0%
Marble	\$ 4,302,420	8	93%	3	0%
Tile/Terrazzo	\$ 5,945,018	30	86%	10	0%
Painting	\$ 8,002,069	64	65%	11	0%

Review of Contract Time Data

The Commission's staff reviewed 946 construction contracts administered by the BBC between 1968 and 1980 for the following information: original contract amount, change orders to that contract, original contract time to construct, actual time to construct, and approved time extensions. A full analysis of these data is presented in a later section of this report.

The average extension on the original contracted construction time was 85 percent, or approximately 10 months. The following list gives the percentage of time overrun for some of the extreme cases:³²

<u>Contract No.</u>	<u>Contract</u>	<u>Percent Time Overrun</u>
E59-5-1	Lowell Technical Institute -- Research Reactor	810%
EJ64-4-1K	Cape Cod Community College Athletic Facility	467%
CW073-2-2	Gardner Courthouse Sewer Lines	458%
EJ67-3-4	Springfield Technical Community College Utility System	362%
P68-8-1A	MCI Bridgewater -- Steam Generator	249%
M60-3-2	Fall River Mental Health Center	223%
EJ64-4-1G	Cape Cod Community College Auditorium	205%

At the Lowell Technical Institute's research reactor, delays were caused in the design stage and after the award of the construction contract. Equipment ordered and scheduled for installation had to be stored for several years because of these delays. The Commonwealth was forced to pay \$850,000 additional storage to the supplier of the equipment. In a random sampling of BBC administered contracts, 41 percent of the buildings took twice as long as the original contract time to construct.

Evidence of Fraud from Technical Investigations

Along with documenting the deplorable physical condition of the Commonwealth's buildings, the Commission's investigations also uncovered possible evidence of fraudulent activity by designers, contractors and subcontractors, as well as by state and county employees involved in the building process. The

phrase "possible evidence" is used because the investigation did not seek or establish fraudulent intent on the part of the people committing the acts. It is not the Commission's responsibility to define which acts are grossly negligent and which are potentially fraudulent; the findings simply illustrate conditions existing in new state and county construction work.

Once the building is complete, assumptions about acts performed during the construction process must be carefully qualified. Much of the construction work could be exposed only by destructive testing. A full discussion of potential fraud in state and county construction is contained in Appendix D, Fraudulent Practices in Public Building Construction, Vol. I. Evidence of fraud gained from public hearings and financial investigations is also discussed in other sections of this report.

From a technical point of view, the construction projects cited below display possible evidence of fraud. In the opinion of consultant Dr. John Woollett, the defects in these building result from more than gross negligence or maladministration. For example, the contractor for the McCarthy Apartments, commissioned by the Melrose Housing Authority:

- o omitted reinforcing rods in load-bearing masonry walls;
- o omitted structural grout at shear anchors that connect the floors to load bearing walls;
- o substituted brick work of an inferior quality;
- o substituted over-sanded and inferior mortar for structural grout above the fourth floor;
- o substituted plain electrical wiring for fire alarm wiring enclosed in conduit;
- o substituted an inferior quality fire pump to that specified;
- o substituted inferior 1/16" floor tiling for the high-quality 3/32" tiling specified;
- o substituted inferior quality carpet for that specified.

Despite these omissions and substitutions of inferior materials, the contractor accepted payment on the basis of what was shown on the plans and specifications (a case study of this building follows).

Construction of the playing fields at Bridgewater State College illustrates potentially fraudulent acts in site work (see case study in the following section). The contractor omitted the specified well-graded sand and gravel sub-base and substituted inferior on-site topsoil. Again, the contractor accepted full payment for materials specified in the original contract.

At Worcester County Jail, load-bearing masonry walls lack reinforcing rods and the mortar contains double the proportion of sand specified. At Cape Cod Community College, structural anchors between the masonry walls and concrete

slabs were omitted, inviting the collapse of walls in high winds. At the Abington Housing Authority, John Digby of the BBC, in a memorandum dated May 1, 1978 to the DCA, states that the general contractor had installed timber that did not meet the specification requirements for: modules of elasticity, compression parallel to the grain, compression perpendicular to the grain, horizontal shear.³³

For a Duxbury Housing Authority project, the general contractor, Sarno Construction Company, accepted \$58,000 over the total contract price while leaving the contracted work uncompleted.

Estimated Construction Costs to Repair Defective Work

Because of the extent and diversity of the defects revealed in state and county buildings, determining the exact costs for repairs is extremely difficult. The Commission's sample for investigation covers approximately one-third of the moneys spent on state and county buildings construction, between 1968 and 1979, and addresses only a part of the total population of the Commonwealth's buildings. To estimate the cost of repairing all defects in all Commonwealth buildings would be impossible.

Dr. John Woollett, the Commission's expert in construction financial forecasting, estimates that repairs to the sample of buildings covered by the Commission's technical investigations would cost about \$300 million.³³ Using the BBC's standard formula to determine project costs (including design fees, furnishing costs, and a contingency), the total project cost would approach \$420 million. If financing costs are included, the cost to the Commonwealth of repairing only the problems in the sample buildings would be \$714 million.

To derive a more accurate estimate of repair costs, estimates provided by the state agencies responsible for particular facilities were used as a theoretical maximum. The 24 percent of institutions that did not report severe defects in the questionnaire survey and the 26 percent that did not reveal severe defects in the technical investigations, were assumed to have perfect buildings. This gives a conservative bias to the estimates. The cost to repair the 76 percent of defective construction reported in the questionnaire survey and the 74 percent of defective construction revealed by the technical investigation should thus be somewhere between zero and the theoretical maximum. For this assumption to be valid, the theoretical maximum cost to repair a building must be expressed as a percent of the cost of originally constructing the facility. Assuming a normal distribution for the building population surveyed and using the PERT statistical procedures, the Commission estimated that repairs to the sample state and county buildings would cost \$130 million. The sample surveyed represents 36.4 percent

of the \$2.036 billion construction costs of state and county building as defined; if repairs to the remaining 63.6 percent of state and county buildings not surveyed is similar, construction repair costs for all state and county buildings built since 1968 would be \$357.14 million. These are only construction costs, i.e., the cost of materials and labor to repair or rebuild defective work. Assuming one-third for non-construction, five percent for contingency and allowing for financing costs, total costs of repairing the defects in the Commonwealth's state and county buildings surveyed would reach approximately \$847.87 million.

This estimate is based on the assumption that the cost to repair today will be the same as the cost to construct at the time a particular structure was built. This assumption makes the estimated repair costs conservative. Recent requests to the state legislature for urgent repair funds support the estimated construction repair costs: in fiscal year 1980, state colleges and universities asked for almost \$20 million for urgent building repairs. Institutions whose construction is under BBC control had their urgent repair request reduced by \$46 million in fiscal year 1980.³⁴

The Commonwealth has spent \$8.993 billion in all construction costs, as defined, between January 1st 1968 and December 31st 1980.³⁵ The results of the technical investigation into \$2.036 billion of this total indicates that much of the construction is defective and will be costly to repair.³⁶ Given some assumptions the total cost of repairing all construction can be estimated.

Of the \$8.993 billion construction cost, \$5.026 billion or 56 percent was spent on buildings and \$3.967 billion or 44 percent was spent on "non-buildings."³⁷ The term "non-building" refers to public works such as roads, bridges, sewers, transportation, tunnels, piers, runways, etc. Assuming a conservative defective rate of 50 percent for buildings not surveyed and 20 percent for "non-buildings," and given a repair cost as a percentage of defective construction similar to that of the above survey, the cost to the Commonwealth of repairing all defective construction is \$2.118 billion.³⁸

Again this estimate assumes that the cost of repairing today has not increased since the time of construction, giving a very conservative bias to the estimate. Not included is the cost to the Commonwealth of loss of use because of the defect, the loss of use during repairs of the defect, nor the costs of secondary damage resulting from the defect. In many cases, secondary damage can be as extensive as the original defect; serious water intrusion from a leaky roof, for example, will lead to destruction of acoustical ceilings, electrical wiring, and finished walls and floors. In a letter dated May 18, 1977 to the BBC, Edward Rossi, Associate Director of Engineering Services for the

Massachusetts State College System, suggests some of the secondary damages:

Obviously, if the leaks are allowed to continue not only will the effective use of the facility be sharply curtailed, but more importantly, the progressive damage particularly in the winter, will ultimately cause major breakdowns in the basic structural systems and brick veneer walls.³⁹

Another letter to the BBC dated August 16, 1977, describing the roof at Salem State College, also describes many unquantifiable costs:

The potential damage to life, limb and property is strongly evident. The metal copings at the subject project are being worked loose by winds and are being carried away. It is possible that people in the area could be injured. Furthermore, property damage outside the building created by loose copings falling to the ground or property damage inside the building created by roof leaks will become more extensive as time passes. ⁴⁰

Case Studies

From the technical reports prepared by the Commission's technical staff and by independent consultants, individual buildings were selected for detailed analyses. Drawn from contracts awarded and supervised by the Bureau of Building Construction, the Department of Community Affairs and independent building authorities, the case studies document representative problems occurring in state and county buildings. All types of structures -- schools, hospitals, parking garages, correctional facilities, courthouses, university buildings, and local housing projects exhibit in some form the failings of the construction process used by the Commonwealth:

- o designs that do not fulfill the functional requirements of the buildings' users;
- o designs that are inadequate and at times grossly incompetent;
- o the buildings that are poorly built by contractors;
- o negligent supervision of construction contracts by the Commonwealth and the designers;
- o careless administration of contracts by the Commonwealth and the designers;
- o acceptance by the Commonwealth of buildings containing serious defects.

The BBC has been responsible for 44 percent of state and county building construction since 1968. In the following section are reports on BBC-supervised contracts for educational facilities (Cape Cod Community College, Salem State College, Southeastern Massachusetts University, Bridgewater State College playing fields, University of Massachusetts/Amherst power plant and library, University of Massachusetts/Boston); hospitals (University of Massachusetts/Worcester, Pondville Hospital); parking facilities (Haverhill parking deck); correctional facilities (Worcester County Jail); and courthouses (Hingham District Court).

The independent building authorities are represented by the University of Massachusetts Building Authority-administered contracts for the residential buildings at UMass/Amherst.

The DCA has been responsible for 18 percent of state and county building construction since 1968. The following reports are on DCA supervised contracts: Melrose Housing Authority, Duxbury Housing Authority and Randolph Housing Authority.

* * *

CAPE COD COMMUNITY COLLEGE

BACKGROUND

Cape Cod Community College (CCCC) lies on a beautiful tract of land in West Barnstable, Massachusetts, overlooking Cape Cod Bay. Built in the late 1960s and early 1970s, nine structures comprise the intimate campus setting: the administration building, auditorium, commons, gymnasium, library, maintenance building, north and south classrooms, south classrooms, and science and lecture hall. To outward appearances, the buildings are very attractive. Although completed without major delays or cost overruns, the buildings contain design errors in the masonry walls, concrete slabs, and drainage systems, creating a host of water leakage problems that not only spoil building interiors but also threaten structural integrity.

Designed by the architectural firm of Desmond and Lord, Inc. under the supervision of the Bureau of Building Construction, the project entailed twelve separate design and construction contracts.* In addition to the nine buildings, the project included work on roadways, walkways, and parking areas, as well as an athletic field and landscaping. Total costs of the original contracts exceeded \$11 million.¹

Construction began on the science building and north and south classroom buildings in February 1968, and ended with the completion of the auditorium in June 1975. Occupancy of several buildings, notably the science and classroom buildings, began in September 1970, although the college has yet to accept formally any of the buildings.²

Each college building is constructed of cast-in-place concrete with masonry infill exterior walls. Steel windows were glazed with insulating thermoplane glass. The roofs are either flat or sloping clerestories, some with monitors and windows. Many of the floor areas consist of cantilevered concrete slabs that project beyond the lower levels of the exterior masonry walls.

*Since designer fees for small contracts are paid at a higher percentage rate than the fee for larger contracts, the more contracts a design project is divided into, the larger the total fee paid the architect. Desmond & Lord had design contracts for five buildings, each costing over \$1.5 million, and five separate contracts for site work, averaging \$200,000 each. Site work is often included in the design contract for a building, but since the percentage rate for a \$200,000 contract (9.35 percent average at Cape Cod) is higher than for a \$1,500,000 contract (6.81 percent average), Desmond & Lord received \$95,998 instead of \$73,338 for the work. See appendix, Exhibit 1.

CONSTRUCTION DEFECTS

One of the most pervasive problems with CCCC buildings is water seepage. Because of numerous design errors, water penetrates the roofs of many buildings, the exterior masonry walls, and the areas around many window sashes. The resulting damage is significant not only to the structure and outward appearance of the buildings, but also to interior features such as carpeting, draperies and, in some cases, books. Indeed, there are so many leaks in the third floor of the library that staff members have had to place lines of buckets and plastic covering on the floors to protect the interior from damage.

The first report of the Engineer's Design Group, Inc. (EDG), the firm retained by the BBC in 1977 to undertake a thorough evaluation of the college's problems and provide recommendations, describes in detail every deficiency evident in the campus buildings. Their second report, "Legal Interpretation of Report Entitled, 'Facilities Inspection and Evaluation at Cape Cod Community College'" of November 7, 1978, attempts to specify whether the problems are due to design or construction errors. The EDG's analysis assigned most of the blame to the designer, Desmond and Lord, and more specifically to Sepp Firnkas Engineering, the structural consultant. According to the EDG report, basic structural design errors in concrete cantilever slabs, vertical rain leaders, gutters, masonry, and flashing are responsible for most of the buildings' problems.*3

Compounding these design errors, the report noted, are construction errors that may be due to either poor quality workmanship or deviation from construction documents. Although the first problems appeared in the administration building in 1970, other buildings on the campus were similarly designed by the same architect. Thus, problems of the same nature may well arise in the future, even in buildings where no evidence of problems is yet apparent.

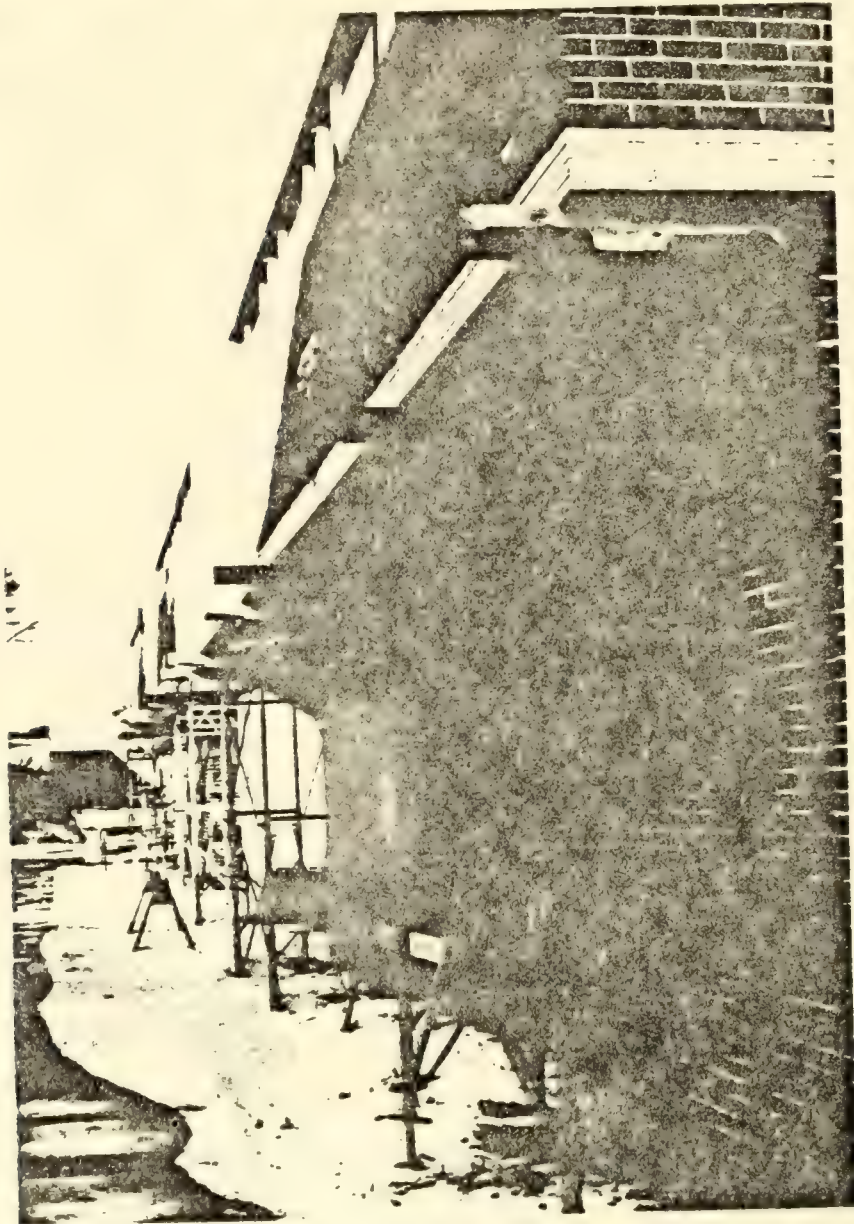
Problems Attributable to Design Errors**

Cantilever Floor Slabs: The design of many of the cantilever floor slabs allows too much flexibility to support normal loads.⁴ One of the numerous examples of this error exists in the commons building where deflecting

*The EDG's immediate recommendations included steel shoring of cantilever slabs and bracing of masonry walls. To date, this has been done. Other renovations, including reroofing and reflashings, repair of slabs and walls, and additional waterproofing are being presently undertaken at a cost of over \$1,500,000. Completion date is estimated at November 1981. See also "Report on Corrective Repairs at Cape Cod Community College," prepared by LeMessurier Associates/SCI, August 1979.

**Based on both EDG reports.

cantilevers are opening horizontal cracks in the top course of the external masonry walls, allowing water to enter between interior and exterior walls and percolate into the building. In the administration building, these slab deflections have strained caulked joints at windows, again allowing water penetration and opening the joint between the second floor wall system and the roof structure by as much as one inch. Throughout the floors of the commons buildings are cracks between interior block partitions and the concrete columns and beams. In the north and south classroom buildings, the heads of windows are separating from the underside of the concrete edge beam, thus allowing water to enter.⁵



1. Typical supporting jacking (below cantilevered floor slab which has deflected). Photo by Paul Zemtsov.

Water leakage leads to gradual cracking and disintegration of the masonry walls; it may also contribute to the rusting and corrosion of concrete reinforcement bars. In the library building of Cape Cod Community College, there is evidence of soaked carpeting, fungus growth, sealing and warping of both doors and wood panels, damage to books, drapes and personal property, and severe staining and efflorescence of walls. Leakage is so great that water percolates through the interior hollow core masonry units long after a storm has ended.⁶ Immediate consequences aside, water penetration into interior masonry walls eventually results in overstressing. This occurrence, plus the deflection of slabs that contributes to the separation of the slab and the exterior masonry wall, severely affects the structural integrity of the building.

An additional consequence of water leakage is heat loss. Once cracks in the exterior walls and joints around windows appear, substantial drafts may dissipate building heat. Heat loss around windows is apparent from fogging or freezing of the interiors of the thermoplane glass.

Rain Leaders: Rain leaders are mainly used to conduct water away from sloped roofs. The rain leaders in CCCC buildings are of inadequate size -- 2" wide⁷ rather than the 3" specified in the State Plumbing Code -- which can contribute to drainage problems.⁸ In several instances, leaders are also placed incorrectly. According to EDG's report, the rain leaders on the roof of the administration building, are too far apart to function properly, another violation of the State Plumbing Code.⁹ More importantly, however, all leaders are situated inside external masonry walls, making them difficult to maintain in the event of water leakage around the hub of the recessed drain. They are not insulated and are protected from freezing by only one width of wall brick. Finally, there is no expansion joint between the drain and leader pipe;¹⁰ movements caused by slab deflection, or other problems may thus rupture the protective flashing and allow profusive leaking.

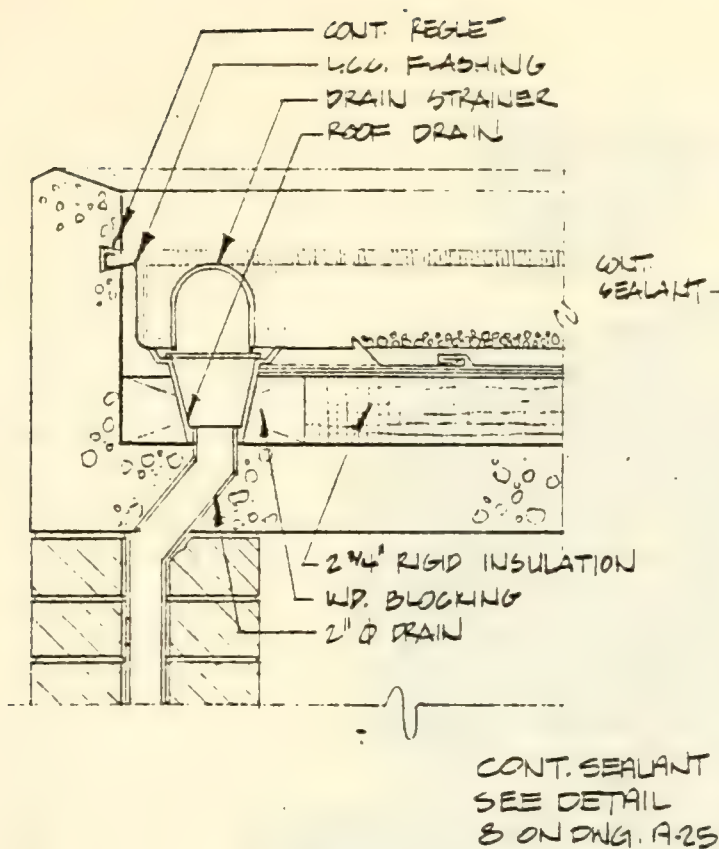
Gutters: A major flaw in the college's gutter system is that gutters are located on the perimeter of the roof deck at the intersection with the parapet wall, instead of being suspended outside the roof. When leaks develop, water therefore flows directly into the building and can back up into the roofing system.¹¹ Backed-up water may rust the reinforcing of the concrete roof, as in the case of the library building, and in time render the entire roof useless.¹²

Masonry: Many of the masonry walls are structurally inadequate to withstand applied loads, excessive movements, or lateral forces. Due to deflection of the first floor concrete slab in the library building, there is a continuous 3/4" wide horizontal separation between the exterior spandrel beam and the exterior masonry wall. The wall itself is 2" out of plumb in the vertical direction and

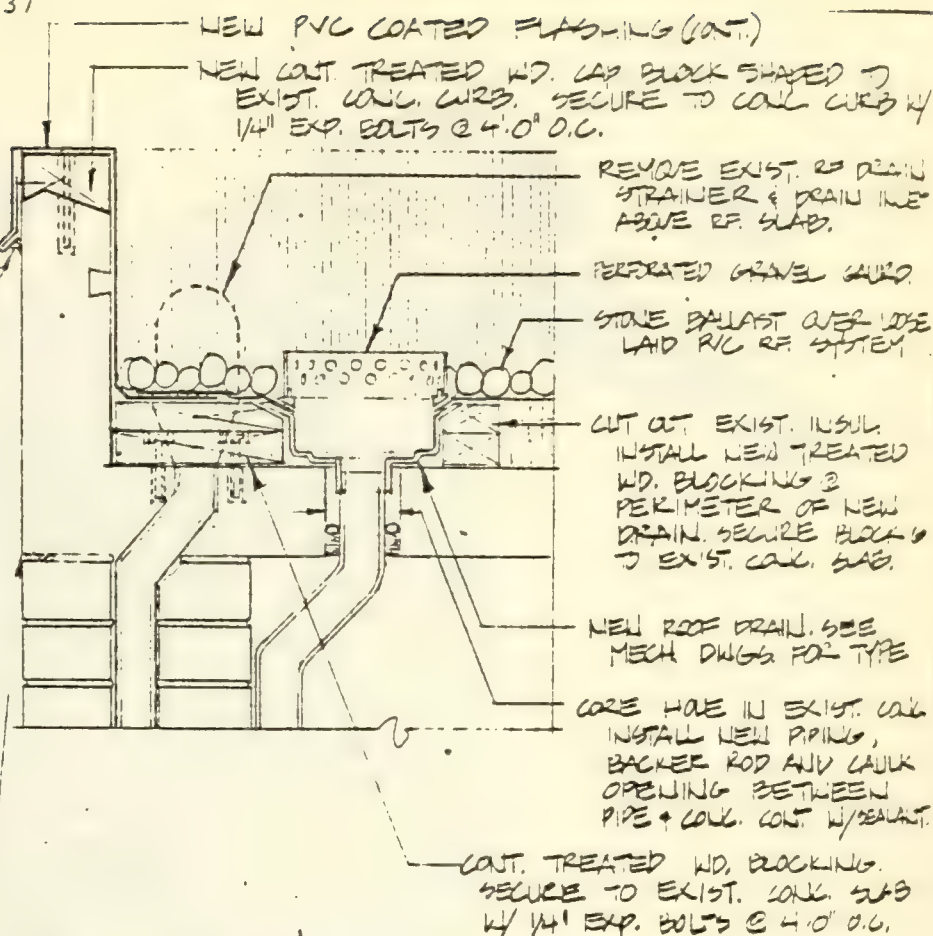
is untied at the top (a construction error).¹³ Coupled with the inadequate stress design, this free-standing wall is liable to collapse. Similar conditions exist in the administration and north and south classroom buildings.¹⁴ Every wall that contains these hazards bears the recurrent consequences of water penetration.

Flashing: The college's roof problems -- leaks, reinforcement rusting, cracking -- are caused primarily by flashing deficiencies.¹⁵ Flashing is sheets of metal or other suitable materials used to seal up a building. If designed and installed correctly, it should help weatherproof the structure by preventing water penetration. Probably for aesthetic purposes, the designer of the CCCC buildings endeavored to minimize the exposed flashing. On the administration building, for example, the perimeter flashing, which is generally copper or stainless steel base flashing tied to the membrane at roof level, terminates in a caulked reglet system on top of the exterior concrete curb.¹⁶ To insure a proper seal, however, the flashing would not ordinarily terminate in this way but would instead be mounted over the top and partially down the side of the curb, thus becoming exposed. Still, the designer's system might have succeeded had the reglet not failed, as evidenced by the loose and displaced caulking, which allows water to seep into the walls or roof.¹⁷

The roof-to-wall flashing on the science building, as well as other buildings, is tied to the membrane at roof level and terminates in a caulked wall reglet 3" above roof level.¹⁸ "State of the art" wall reglets, however, are typically 8" above the roof.¹⁹ Again, this is an instance of the designer's attempt to minimize flashing exposure. This error is also clear in the library roof skylight where the curb is too low to accept adequate flashing, allowing more water to penetrate the building.²⁰



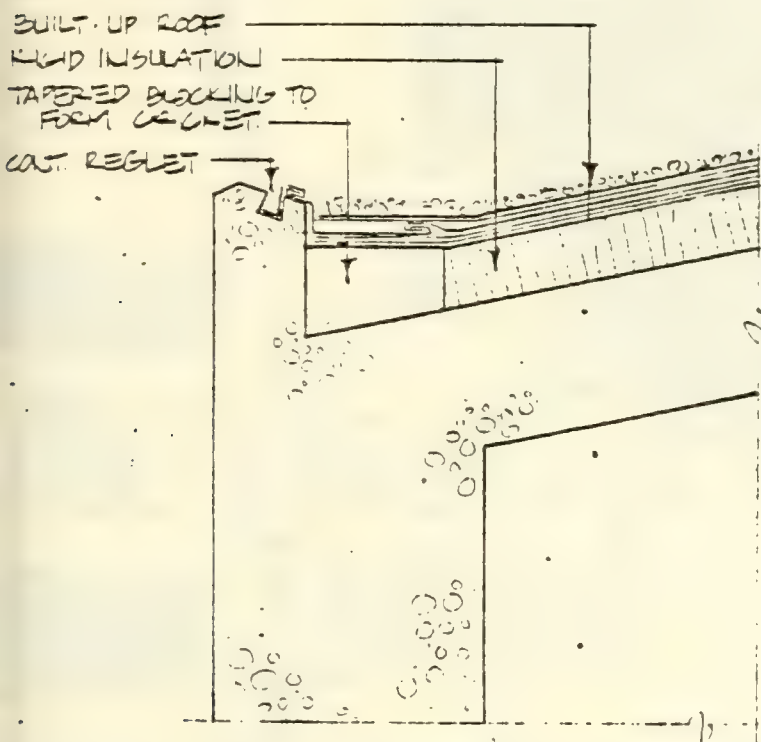
EXISTING CONDITION



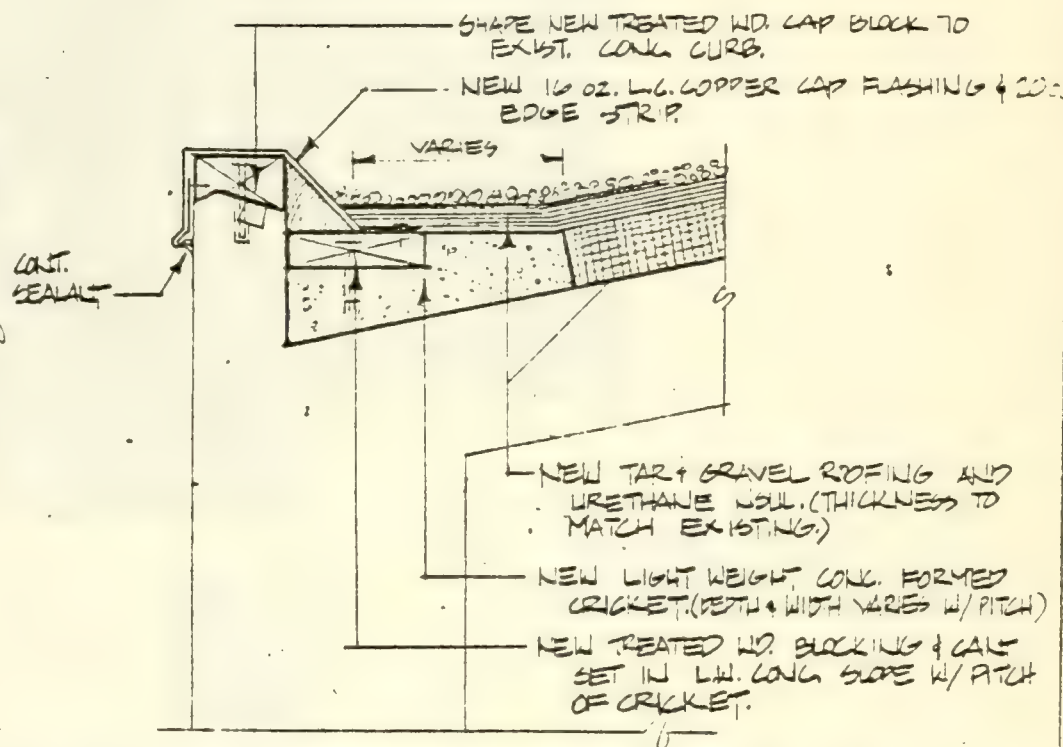
NEW CONDITION

1 TYPICAL EXISTING AND NEW CONDITIONS AT ROOF DRAIN

A-24 SCALE: 1/2" = 1'-0"



EXISTING CONDITION



NOTE: REMOVE EXIST. FLASHING & BLOCKING. REMOVE EXIST. ROOFING AND INSUL. A MIN. OF 3'-0" UP THE SLOPE.

TYP. NOTE AT ALL NEW CRICKETS: ALL NEW CRICKETS SHALL BE FORMED WITH LIGHTWEIGHT CONCRETE TO CONFIGURATIONS INDICATED ON DWGS.

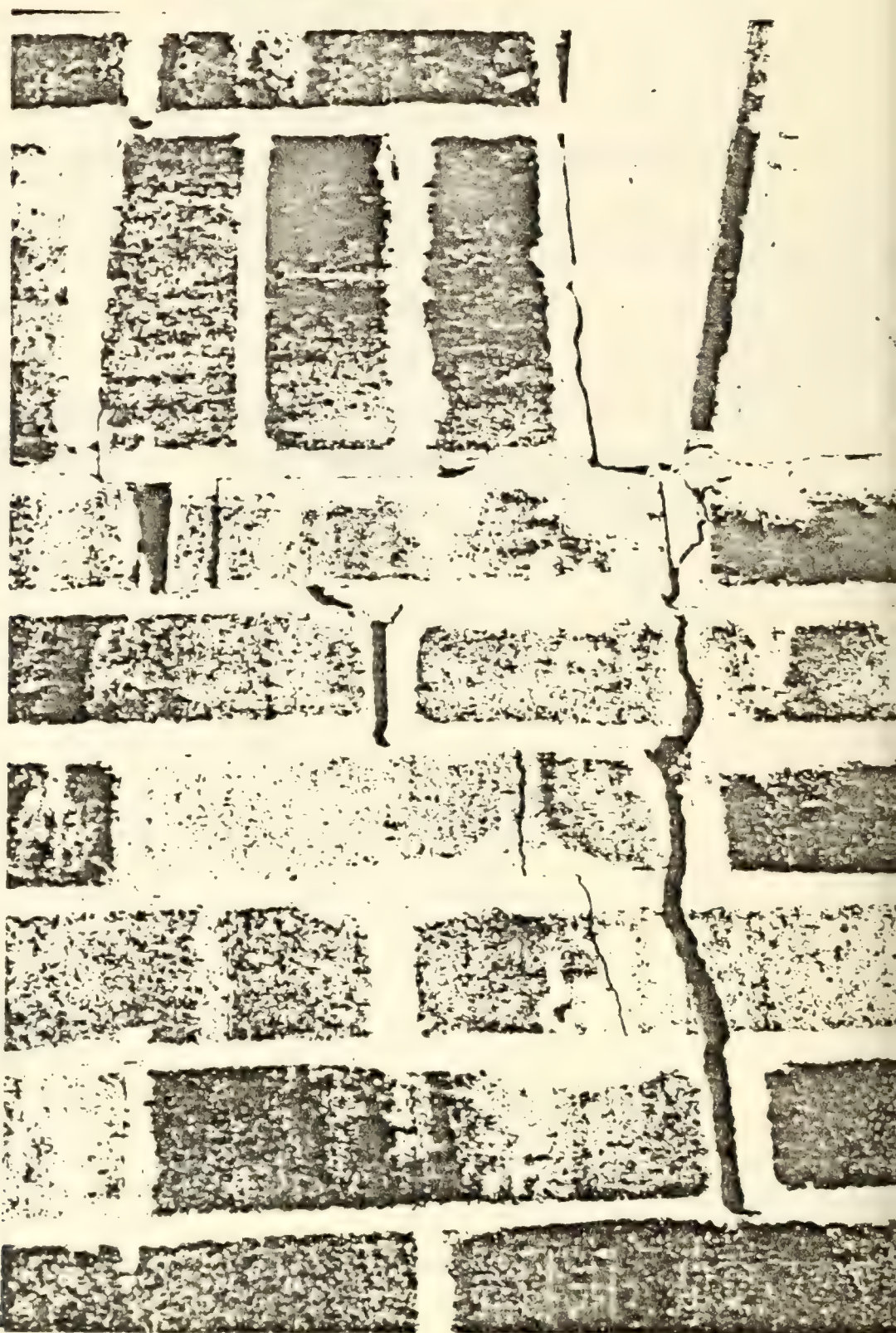
NEW CONDITION

2 TYPICAL EXISTING AND NEW CONDITIONS AT FORMED CRICKETS

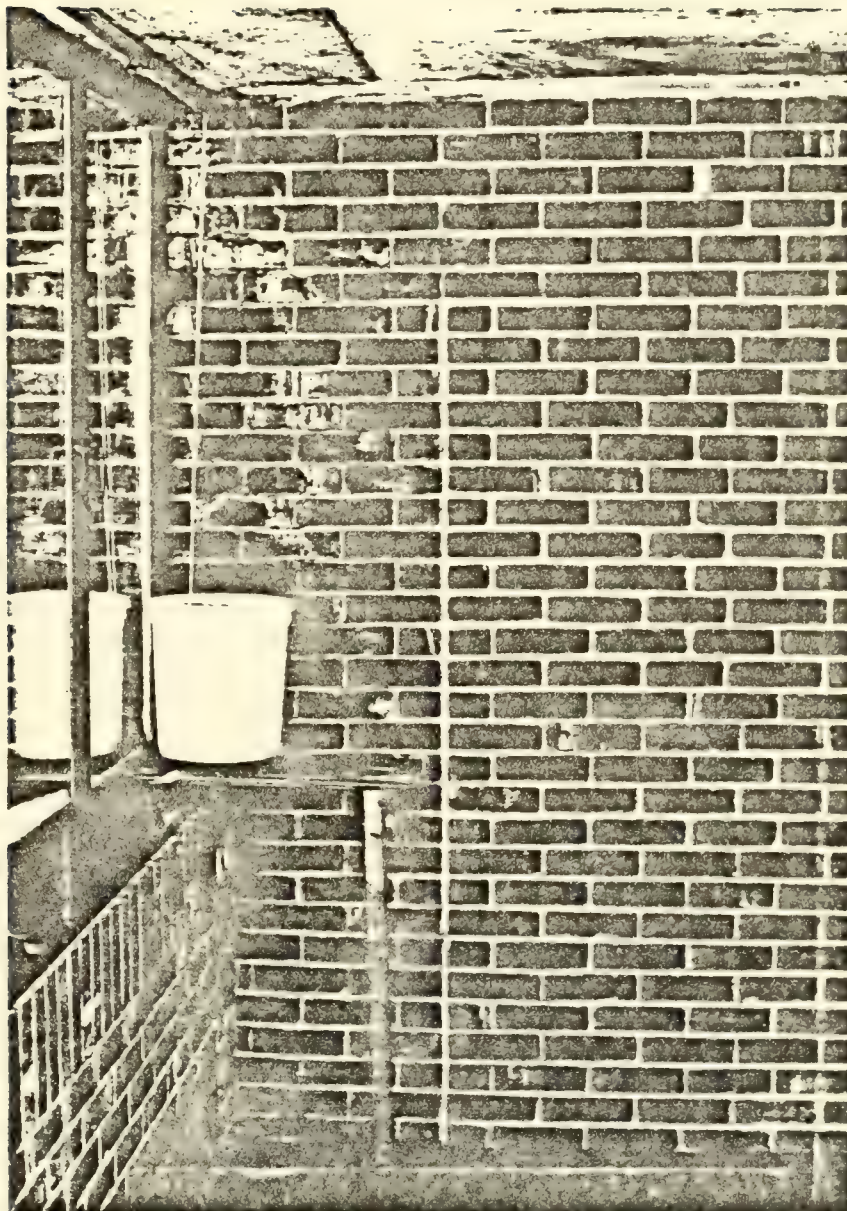
A-24 SCALE: 1/2" = 1'-0"



Left, deficient flashing
drainage system.



Right, typical crack in exterior
brick (below cantilevered floor
slab which has deflected).



Water penetration into Cape Cod Community College's President's office.

Of utmost importance, then, is the designer's non-compliance with "state of the art" criteria for flashing on built-up walls. Metal flashings are generally unsuitable as base flashings because of their rigidity, incompatible coefficients of thermal expansion and contraction with built-up roofings, and the difficulty in connecting them to roof membranes.²¹ Moreover, base flashings should extend at least 8" above roof level and metal counterflashings (not always present in the CCCC buildings) should overlap base flashings by at least 4". When these standards are not met and when the problem is exacerbated by poor installation, water percolation can be very damaging.

Problems Due to Construction Deficiencies*

There are numerous examples of careless workmanship, deviation from design specification, or improper installation of materials in the construction of Cape Cod Community College. The roofs (a filed sub-bid area) of many buildings are not adequately pitched to allow rainwater to run into the gutters. On the auditorium and maintenance building roofs, for example, extensive ponding occurs after storms. Because of improper and perhaps shoddy installation, the roofs of five buildings exhibit signs of blistering, doming and, in some cases, leaks.²²

Problems with the gymnasium roof illustrate how design deficiencies are exacerbated by construction errors. The type of complex roof structure that was designed** is very difficult to keep watertight; the designer's details rely on the sealant alone, not the flashing itself, to keep the roof watertight. However, in addition, the contractor seems to have deviated significantly from the plans. There is inadequate roof pitch toward the drains, leaking of expansion joints, poor flashing on the entire structure, and substitution of built up asbestos felt for the neoprene specified as the flashing on the roof monitors.²³ Extensive leaks from the roof have caused multiple problems in the interior, not the least of which is the damaged gymnasium floor.²⁴

Workmanship on flashing is another example; lack of or poor fastening of the flashing is pervasive. The base flashing on the auditorium patio is not fastened to the concrete slabs.²⁵ In addition to the design flaws, unsecured fastening severely impairs the function of the flashing.

Installation and caulking of windows (both filed sub-bid categories) is another area for concern. Windows on both the auditorium and gymnasium buildings leak, apparently from an imprecise installation and a poor application of caulking.²⁶

Other construction errors:

- the first-floor terrace of the commons building is not sufficiently sloped to permit adequate water runoff, nor are the rain leaders in the proper location.²⁷

*Based on both EDG reports.

- the mortar used on the masonry walls of the administration building contains too much lime. Such a mix should be used only on interiors and not on exterior walls where high load strength is needed: The results of such errors are eventual weathering, cracking and increased stress.28
- some masonry walls were not anchored to the concrete slabs where anchorage had been specified in the contract documents. Together with inadequate wall design, deterioration from either water seepage or improper mortar, and deflections due to cantilever slab design errors, this condition invites the possibility of "blow downs," or collapse of walls under heavy winds.29
- exterior masonry walls on the Auditorium protrude well beyond the spandrel beam instead of being flush or slightly recessed.30

CONCLUSION

The Cape Cod Community College buildings suffer many structural problems, some of design, others of construction. In the opinions of Engineers Design Group and James C. Deveney, P.E., technical consultant to the Special Commission, however, design errors alone would leave the college in a roughly equivalent state.^{31*} The construction errors simply compound and bring urgency to the design defects. The major problem in the CCCC buildings is water penetration; design defects in the cantilever slabs, gutters and leaders would eventually allow leakage. Together with poor fastening of flashing, poor soldering of joints, and poor caulking all around, however, the problem becomes apparent much sooner.

Because the college was built over several years, several buildings were constructed and occupied while others were either in the initial stages of construction or not yet begun. Apparently both the design and construction errors, left unnoticed in the first group of buildings, were repeated on the second group, implying that the problems evident so far are only the first of many. The fact that the defects were repeated suggests a lack of contract supervision on the part of the architect, general contractor, subcontractors, clerk of the works, and project engineer.

*Many of the college's design features are unusual from a construction standpoint; the flashing details demonstrate this. Norman Rodham, the BBC project engineer, noted in August 22, 1979 and April 1, 1980 interviews by the Special Commission staff that the various contractors frequently requested explanatory drawings for the unusual design and the architect consistently refused to provide such drawings.³²

Salem State College
New Library Building

Introduction

The library at Salem State College, a building whose structural deficiencies were discovered only three months prior to its scheduled opening, was designed by the architectural firm of Desmond & Lord. A combination of design and construction defects forced the student body at Salem State College to wait three academic years to use the learning facilities. The Commonwealth of Massachusetts has recovered only \$200,000 for the costs of corrective work, delays, and losses all relating to the structural design and construction errors, although the Commonwealth spent \$1.3 million in out-of-pocket costs directly attributable to the error.

Background

In 1965, the Legislature appropriated \$150,000 for the preparation of plans and specifications for a new library building at Salem State College, with an estimated cost of construction (ECC) of \$3 million. Approximately one year later, on February 9, 1966, a contract for architectural services was executed between the Bureau of Building Construction (BBC) and the firm of Desmond and Lord. ¹ In a letter dated March 9, 1967 the BBC formally approved Desmond and Lord's request to employ Sepp Firnkas, Inc. as the structural engineer for this project. ² Compensation was computed in accordance with the standard BBC contractual architectural payment percentage scale, on the basis of the \$3 million ECC. ³ Desmond and Lord, however, presented completed working plans and specifications on October 17, 1968 with an estimated cost of construction of \$3,744,000. When the BBC objected to this estimate and paid the designer a fee based on the original \$3 million ECC, Desmond and Lord requested a compromise fee based on an ECC of \$3.5 million. With the BBC's approval, the Commonwealth subsequently paid the additional money to Desmond and Lord due to the increased estimated cost of construction. ⁴ Approximately four months after submission, on February 4, 1969, working plans and specifications received final approval. ⁵

On July 24, 1969, the construction contract was awarded to the lowest bidder, Palandjian and Sons, Inc., in the amount of \$4,123,060 (\$623,000 or 17.8 percent over the last "official" ECC). Construction began on August 21, 1971. ⁶

Structural Deficiencies

In June of 1971, three months before the new library building was scheduled to open, structural problems became apparent. In a memorandum dated March 14, 1973, Walter J. Poitrast, then the Director of the Bureau of Building Construction, described the problem to Albert H. Zabriskie, Deputy Commissioner

for Central Services: "On or about June 1971 [the project was approximately 75 percent completed], the contractor notified the Bureau and the designer that as he started to remove the construction supports of a particular cantilever, he observed and recorded a deflection which he felt was beyond the reasonable tolerance." ⁷ Accordingly, a meeting was immediately held between all involved parties to determine why this unreasonable deflection was occurring. LeMessurier Associates, Inc., a structural engineering firm, was then retained to investigate and report on the strength of the library building at Salem State College. On October 29,, 1971, John E. Brennan, III, a registered professional engineer employed by LeMessurier Associates, summarized the structural problems: ⁸

Briefly, we found areas which have been designed in violation of the 1963 and the 1971 ACI Codes. The provisions in the ACI Codes that have been violated include the allowable shear stresses in concrete, the moment capacities of the concrete sections, the torsional capacities of the beams, and the spacings of the ties in columns. The shop drawings do not always agree with the original design. Yet the inconsistency was not rectified before approval of the shop drawings was given. Samples of probes indicate that reinforcing steel has not been placed at locations called for in design. The low placement of some top steel and the insufficient lap of steel at splice are the direct causes of structural deficiency in some portions of the building.

In a letter dated November 26, 1971 to Walter J. Poitrast, Director of the BBC, Alphonse R. Mancuso of Desmond and Lord stated: "LeMessurier Associates, Inc. have just completed their investigation of the structural strength of the above named building....Sepp Firnkas is still working on corrective measures and roof showing to support areas where required because of the probability of snow loads in the near future. As soon as these are received and checked by LeMessurier Assoc., they will be promptly released as a supplement to this report." ⁹

The report prepared by LeMessurier Associates identifies 72 individual structural items as contributing to the structural inadequacy of the library. As discussed below, the 72 items dealt with structural deficiencies within the cantilevers, roof slabs, waffle slabs, beams, and columns.

A) A cantilever is a projecting beam or slab that overhangs the structural members that support it. For example, the beams or slabs that form a balcony protruding from the side of a high-rise apartment complex are cantilevers. Within the Salem State library structure, many of the cantilevers were designed and/or built with inadequate moment and shear capacities. The reinforced concrete cantilevered slabs and beams could fail by shearing away from the rest of the structure, or deflect away from the structure to such an extent to make them unusable. The shear and moment stresses in a reinforced concrete cantilever are carried partly by the concrete and, more significantly, by the reinforcing steel. This reinforcing steel was found to be inadequate in strength. The fact

that much of the steel was incorrectly placed during construction only compounded this design error. A sufficient load of students, books or desks on the cantilever would cause it to deflect (bend) and possibly break off completely.

B) The major structural defect in the roof slabs was insufficient reinforcing steel for the load. Again, this basic structural design error was exacerbated by incorrectly placed reinforcing steel at the time of construction.

C) In some sections of the library, the waffle slabs, i.e., the reinforced concrete floors in a multi-story structure, do not have adequate shear capacity. This again results from structural design errors. At the point where the waffle slab meets a supporting column, there is insufficient reinforcing steel to prevent the slab from cracking and failing.

D) A large number of the library's supporting beams do not have adequate shear strength. The structural design violates the various building design codes, in this case by not providing sufficient shear reinforcing steel in the form of stirrups. Beam stirrup steel serves as vertical reinforcement in the concrete beams that rest on the supporting structure. The inadequate design and incorrect placement of steel could cause the building to fall apart.

E) Structural columns are the vertical structural members that carry the load to the foundations. The LeMessurier Associates report found that the reinforcing ties in all but two columns have ties at spacings in violation of the American Concrete Institute code. The columns therefore thus designed with inadequate strength to support the floors.

Examination of the library at Salem State College by LeMessurier Associates revealed structural problems of incompetent design, incorrect approval of shop drawings of that design, and incorrect placing of reinforcing steel during construction. All the major structural components of the building were designed within adequate strength to support the loading. While the library was originally scheduled for completion on August 20, 1971 or at the outset of the 1971/1972 academic year, major structural problems were just coming to light at that time. In his report of the Bureau of Building Construction activities for 1972, the Commonwealth of Massachusetts State Auditor Thaddeus Buczko wrote: 10

Representatives of the Department of the State Auditor visited the Salem State College on January 24, 1972 to review the condition of the new library building under construction. The structure is a four-story reinforced concrete building. The following observations were made:

Cracks were observed on all floors around many of the columns and along the floor line outside the column of the small cantilevered study rooms and the large cantilevered function room on the fourth floor north (front) of the building.

Construction jacks had been placed to support all areas in question pending corrective action.

Some 100 probe holes have been made in the floors and the roof, as requested by the architect, to check placement of the reinforced steel in the concrete slabs. It appeared that the Walker ducts, imbedded in the floors to receive telephone and other wiring may have weakened the floors in their immediate areas. The probe holes revealed that some of the reinforced steel in the floor and roof slabs had moved down from its original design specification, a condition which could have been caused by workmen standing on it while pouring the concrete.

When Attorney General Quinn made a personal visit to the construction site on January 21, 1972 at the request of the general contractor, he stated: "A very recent investigation by the Contracts Division of my office indicates that the building may be unsafe...a potentially dangerous hazard to the safety and lives of college students and personnel. Consequently, I am calling upon the Department of Public Safety to close this building immediately...for the protection of the construction workers and those who may pass in the immediate vicinity." 11

Two months later, the BBC agreed that the general contractor would perform corrective work at a construction cost not to exceed \$1,200,000; the general contractor would also receive \$131,015 for costs due to the delays. To meet the costs of the needed repairs, the BBC transferred \$580,000 from a construction contingency fund and the Legislature voted an additional \$500,000. Costs continued to increase, however, and by July 1972, an additional \$69,750 was transferred to the project's accounts, thus raising the total amount of funds designated for the project to \$5,664,750. 12

During the structural deficiency discovery, observation and correction period, many discussions regarding the responsibility for the defects took place among the Office of Administration and Finance, the Attorney General's Office, the Bureau of Building Construction, the St. Paul Fire and Marine Insurance Company, Palandjian and Sons, Inc., the Continental National American group, and Desmond and Lord. The BBC finally issued a Certificate of Substantial Completion (signifying 99 percent completion) effective November 9, 1973, two years and two months behind schedule, and with a final construction cost of \$5,268,040. 13 This amount is 28 percent larger than the original bid price, and 75 percent larger than the project the Legislature had requested for in 1969.

Problems continued, however, because funds previously set aside for furnishings and equipment had been used up to complete construction. Moreover, the general contractor, who has since gone out of business, left uncompleted punch list items amounting to some \$20,000 to \$25,000 worth of work that were paid for out of the operating budget. 14

The state college finally occupied the building at the start of the academic year 1974/1975, using old library furnishings and equipment until the Legislature voted an additional \$40,000 for replacements. The certificate of use/occupancy was officially executed on April 3, 1974. In May 1974, the Attorney General filed suit against Desmond and Lord to recover \$1.5 million for the costs of corrective work, delays, and losses relating to structural design errors. In November, the Commonwealth and the architects' insurance company reached an out-of-court settlement of \$200,000. 15

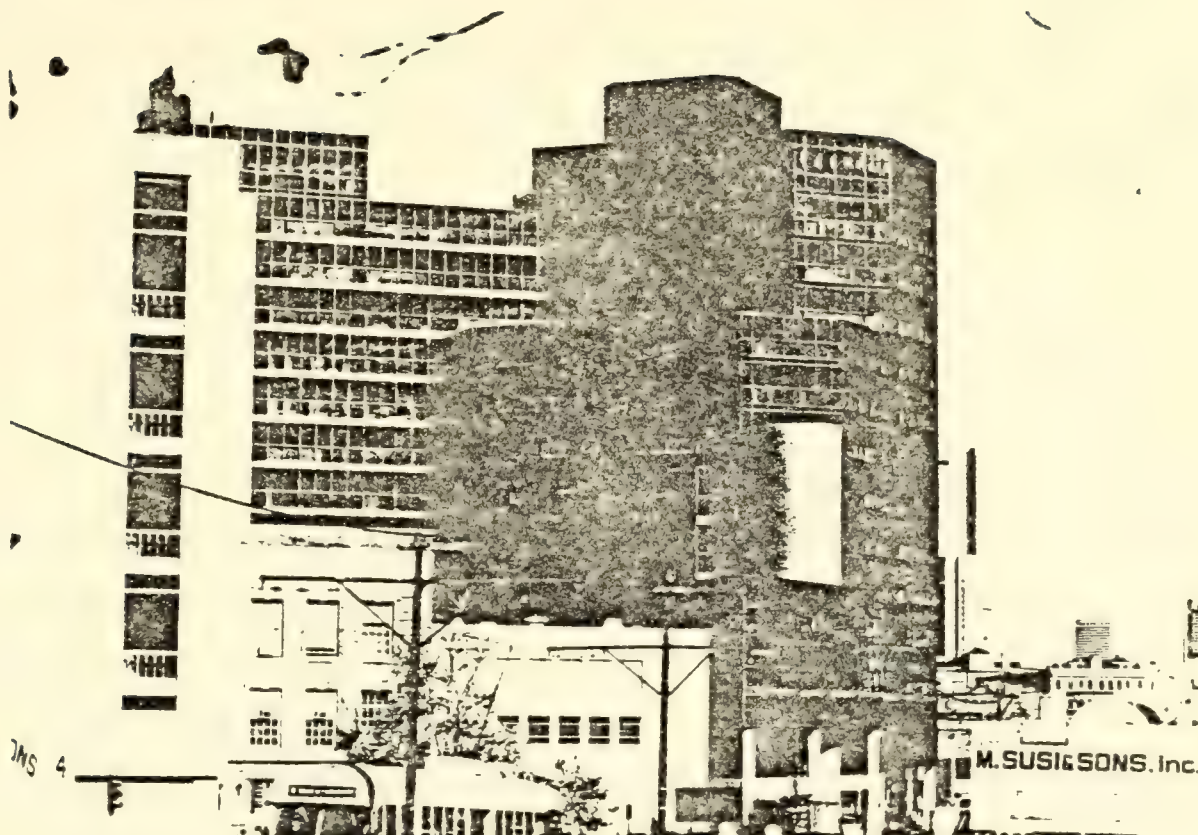


4. Exterior wall crack, and deflected exterior facing.

BOSTON STATE COLLEGE

INTRODUCTION

The Boston State College Tower Building illustrates the consequences of poor architectural design. Research by Commission staff indicates that among the myriad problems are faulty heating, ventilation and air conditioning systems (HVAC), a lack of firestops and adequate fireproofing throughout, a useless auditorium balcony, and five floors of wasted space. Aside from the expense to the college of some defects, such as the troublesome heating system, other problems -- notably the lack of adequate fire protection -- constitute a distinct violation of all fire codes and adversely affect the safety of the entire structure.



Boston State College Tower Building. Photo by Deborah Fennick.

BACKGROUND

Construction began on the \$15 million project in February 1973. The plans called for a 13 story glass enclosed structure housing a library, classrooms, an auditorium and a cafeteria. While originally set for completion on March 13, 1976, several faculty members and administrators decided in winter 1974 that some rooms should be eliminated from the plans to allow new room arrangements. At that point, the building was 75 percent finished. As a result of the redesign suggestions, the BBC issued a stop-work order on floors 5-13 and construction ceased on January 14, 1975. (Appendix Exhibit 1.)

The project architect, Charles A. Maguire and Associates, issued revised plans in May 1975; in August, Franchi Construction Company, the general contractor, submitted an estimate of \$135,000 for the revisions in the form of a change order proposal. (Ex. 2.) The BBC rejected the change order.*

*Almost three years later, on May 14, 1978 Franchi submitted another change order for delay incurred costs totalling \$1.5 million (Ex. 3.) which the BBC also rejected. (Ex. 4.) Franchi is now suing the Commonwealth for these damages. This action is pending in Suffolk Superior Court.

After a nine-month delay, the BBC ordered work to continue according to the original design on September 10, 1975. The revisions were never incorporated. (Ex. 5.) Construction proceeded through 1976 and on November 29, the architect and the BBC certified the building for use and occupancy; it received the BBC's final acceptance in January 1978.

DEFICIENCIES

Fire Protection Methods

The fact that the BBC ever accepted the Boston State College Tower Building much less certified it for use, remains astounding in light of the many defects that both threaten the safety of occupants and severely impair its usefulness. The building's fire protection system is at best inadequate, at worst, catastrophic. Both Dr. John Woollett, associate professor at Harvard's Graduate School of Design, and James C. Deveney, P.E., technical consultants to the Commission, have gone so far as to call the building a "potential towering inferno." Specifically, a six-inch gap exists between the basic structure of the building and the outer curtain wall (the exterior section of the building).^{*} To make such a structure safe in the event of fire, firestops, (flame-resistant partitions between floors) are mandatory. The architect did not specify firestops, however, in the design of Boston State. If a fire broke out on any floor, it could spread rapidly up the building with the gap between the curtain wall and structure acting as a draft or chimney. Despite a June 6, 1974 letter from C.E. Maguire architect Charles Chaloff, asking Franchi Construction for a change order to close off the gap with insulation and gypsum board, no action was taken.¹ (Ex. 6.)

The Commission staff also discovered that some steel structural members are not adequately coated with fireproof material to prevent them from losing strength in the heat of a fire.^{**} Typically a building's steel beams are covered in a thick layer of a fire-resistant asbestos or similar heat resistant compound. Without this treatment, the beams, and, thus, the building would collapse in the case of fire.

^{*} Ordinarily, the basic structure should meet the curtain wall; however, at Boston State the curtain wall and curtain wall frame are tied into the basic structure only at intervals.

^{**} e.g., in mechanical rooms #7-21 and #6-18.2

Firestops and structural protection are standard practice in high-rise buildings; such protection is also required by all building and safety codes.³ Yet crucial firestopping details have noticeably been left out of the architect's design specifications. What is more perplexing though, is how this deficiency was left unnoticed. Before construction begins, a general contractor or subcontractor routinely prepares shop drawings, i.e., plans of how he will construct the building based on the design specifications, which are then returned to the architect for approval. Neither the architect nor the general contractor nor subcontractor seems to have been alerted to the problem. According to Dr. Woollett, the lack of firestops between floors reflects gross incompetence on the part of the BBC building inspectors, the general contractor, the subcontractor and the architect.

HVAC System: Defects in the HVAC system of the Tower Building have resulted in poor temperature control, inefficient heating and air conditioning, pipe leaks, and pipe freeze-overs. It has needed constant repair. The Commission staff found that most of the system's troubles stem from the fact that the pipes run through a poorly insulated space between the curtain wall and interior partition of the building.⁴ Although of the type specified and accepted by both the architect and the BBC, the rigid insulation on the curtain wall was nonetheless insufficient and installed incorrectly. Intended to protect the piping, it was constructed with large gaps between sections, such that the pipes are exposed to winter temperatures.. The rigid insulation is also falling off the curtain wall in many locations (e.g., penthouse mechanical room). However, even if properly insulated, the pipes are vulnerable to cold weather because they lie too close to the curtain wall.

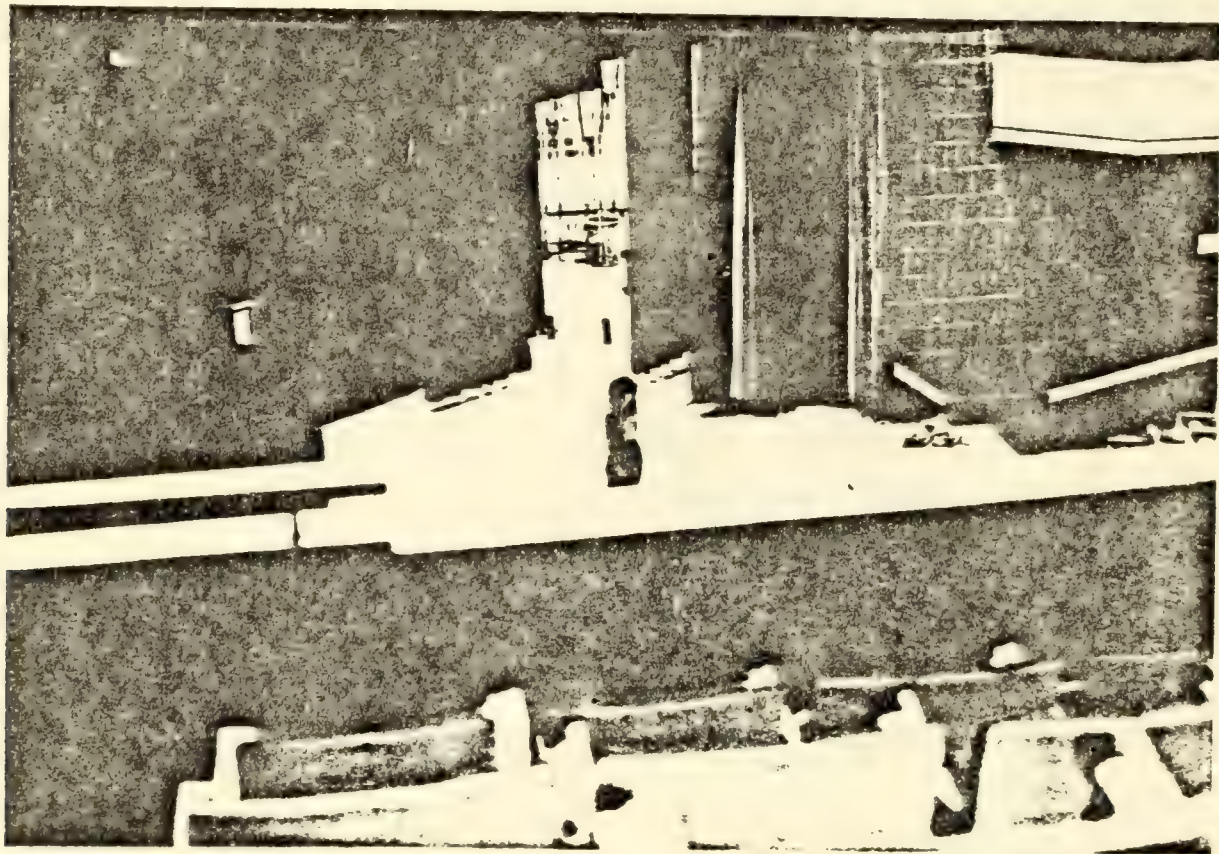
The design of the HVAC system requires that it be entirely shut down for repair, even if a freeze-up or other problem occurs in a single location. In the winters of 1977 and 1978, the heating pipes froze solid, then burst, necessitating a complete shutdown of the system, the closing of the building and extensive repairs.

Auditorium Design

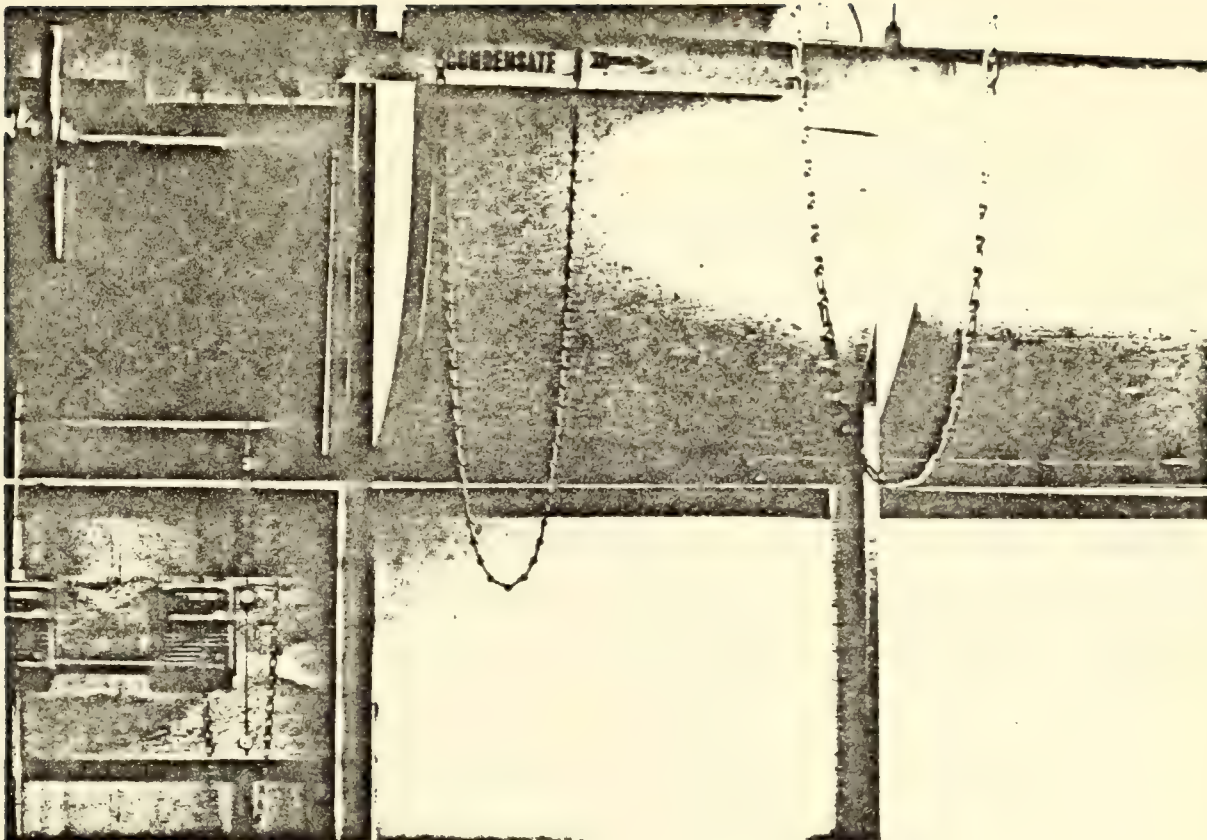
An equally dramatic flaw in the building is the design of the auditorium. Although it is not defective from a safety standpoint, the area's function is limited since it is impossible to see the stage from the balcony, a section that contains one-third of the seats.⁵ The view from many of the seats is totally obscured so that the people standing on the stage cannot be seen at all. Even from the best seats, a tall person can see less than half the stage. The balcony also interferes with the projection from the booth onto the movie screen so that

both are unusable. These errors reflect exceedingly poor design resulting in costly wastefulness.

The design failings aside, construction of the building was less than perfect, as shown by other Commission staff findings: one suspended exterior ceiling is dropped approximately 4" below the other ceilings (filed sub-bid area); no caulking was installed around many exterior joints, e.g., where the tallest exterior columns meet the exterior suspended cement plaster ceiling (a cause of leaks) (filed sub-bid area); various concrete blocks are out of plumb, e.g., at elevator lobbies #6,7,8,9,10 (filed sub-bid area). At various ceiling locations, gypsum board was used where acoustic tile had been specified (filed sub-bid area); loose fibrous material on the cafeteria ceiling is peeling off (filed sub-bid area); hardware is falling off doors and door stops are coming out. Finally, whether a design or construction defect, glass has been breaking in the exterior curtain wall windows.



View of stage from balcony seats at Tower Building, Boston State College.
Photo by Amy Seemes.



View of Rigid Insulation Falling
Off Tower Building Curtain Wall



View of Gap Between Building
Structure and Outer Curtain Wall
of the Tower Building,
Boston State College

Underutilized Space

The auditorium is not all that is being wasted at the college. The top five floors of the 13 story building were not occupied or utilized from 1975 until the summer of 1980. Presently they are not used and do not serve the purpose for which they were designed. Thus, fully one half of the usable space in the building has been wasted, and the Commonwealth has paid to heat, air condition and maintain the space for five years. Boston State College's official explanation for this waste is that the floors could not be used as a library, as originally intended, because there is no single control point for security and checking books;⁶ there are instead public entrances, elevators and stairways, on each floor. Library security features were not included in the design plans, which implies that the architects never addressed this problem. Rather than posting guards at each exit, the college has decided to leave the area unoccupied. *

To address this problem long after the building's completion, the architect recommended library security changes, reprogramming the elevators. As early as May 6, 1974, in a letter to John Berlinquet, the Principal Civil Engineer of the State College System, changes were recommended at a cost of less than \$9000. (Ex. 7.) Despite subsequent letters from both Berlinquet and Edward Rossi, the Associate Director for Engineering Services for the State College System, dated December 15, 1976 and May 17, 1977, respectively, to Walter Poittrast, Director of the BBC, requesting a contract for the modifications, the library is to this day unsecured. (Exs. 8,9.) Although a security problem does exist for floors 9-13, it could have been corrected inexpensively in the last six years. The Department of Public Safety (DPS) never actually certified the entire building for use and occupancy, however. In a July 16, 1979 memo, DPS inspector Alfred Downey wrote to chief DPS inspector John Olsen that in 1975 Boston State College had requested him to inspect and certify the new Tower Building.⁷ However, the college could not locate either the proposed or as built plans for the project. Without these documents, an inspector cannot adequately compare the finished design and construction to the design plans and specifications. Because of the college's request for space for September classes, Downey nonetheless inspected and approved the first three floors as safe for occupancy. Even after repeated conversations with Boston State College officials, the inspector received no plans.

*it would be possible to steal books by taking them down the many entrances.

When remodeling contractors applied to do work at the school in early 1979, the plans reappeared. Downey then inspected the rest of the building, only to find it illegally occupied from the fourth to the eighth floors. He also noted numerous safety violations, such as areas with insufficient egress, and the problematic auditorium balcony. In addition, he recommended reservicing of the elevators. In a July 27, 1979 memo to Chief Olsen, Downey stated that upon further investigation, he found deficiencies in the building's fireproofing and firestopping, and in the application of wall insulation in mechanical rooms.⁸

In response to the Department of Public Safety's concerns over violations under the existing construction contract, the BBC retained Amsler Hagenah Maclean Architects, Inc. to establish a definitive list of items to be corrected, completed or repaired. The corrections of items in the contract would then allow the DPS to accept the building and to issue a final certificate of occupancy. As determined by Amsler Hagenah MacLean, the total cost of the corrective measures would be over \$300,000.*⁹ (Ex. 10.)

CONCLUSION

All the defects of the Boston State College Tower Building significantly reduce both the safety and usefulness of the structure. With the present firestopping deficiencies, each a violation of state fire codes, the resulting damage from a fire could be devastating. This problem, together with errors in auditorium design and the lack of security on the building's upper five floors, has resulted in a totally wasteful project. The faulty HVAC system, which has since been remedied,** represents a further example of inept or at least inattentive design.

Overall, the project has suffered from a literal hodgepodge of improper design programming (particularly on the part of officials at Boston State College for requesting room changes and the BBC, for accomodating and then rejecting the request), incompetent design, and inferior construction. That the BBC certified this building for use and occupancy and even granted it final acceptance, despite blatant safety violations and design failings, is remarkable in itself.

*Concerning the firestopping deficiencies, Amsler Hagenah MacLean is now conducting a further report to determine the extent of the problem and what measures should be taken to correct it.

**At a cost of nearly \$10,000, the college in late 1979 added more insulation to the curtain walls and rerouted some pipes inside the building.

The Tower Building will not officially meet DPS safety standards and receive certification until corrective measures, as itemized by Amsler Hagenah MacLean Architects Inc., have been completed. The firestopping problem, which the Commission's technical staff considers of utmost importance, remains unresolved. Oddly enough, John Olsen, the DPS chief inspector, stated in a November 20, 1980 Commission staff interview that the lack of firestopping in the gap behind the curtain wall, although part of the reason for the DPS's refusal to issue certification, does not appear to be that hazardous. He said, however, that the department is waiting for the results of Amsler Hagenah MacLean's report on the problem.¹⁰ In a November 21, 1980 interview, Boston State College's Director of Planning and Development, Bill Morrissey, denied that a firestopping problem even exists. Furthermore, he had no explanation as to why the DPS would not certify the building.¹¹

SOUTHEASTERN MASSACHUSETTS UNIVERSITY PHYSICAL EDUCATION BUILDINGSWIMMING POOLSIntroduction

The history of the Southeastern Massachusetts University (SMU) swimming pools provides a clear example of inordinate repair costs to the Commonwealth resulting from poor initial design decisions. The use of a particular combination of components, and especially of a major component with a relatively limited lifespan, may have saved money in the short run: as in much of the Commonwealth's construction, however, it appears that long-term costs and use did not receive adequate consideration.

Another aspect of the poor design of the SMU pools was the unnecessary specification of an expensive waterproofing material. When the original waterproofing work was done a change order was processed to eliminate the installation of the material, but the credit subsequently granted the Commonwealth was inordinately small.

Description of Physical Problems

The SMU pools, completed in 1971, were lined with a marbleite plaster finish known as marcite. By spring 1977, chunks of the marcite surface had begun to detach from the underlying concrete shell. The marcite had also deteriorated in a more general way, sloughing off its outer layers in the years preceeding that spring. The resulting silt strained the pumps, filter, and vacuum cleaners. When the pools underwent repair in 1978-79, Foster Jacobs, SMU Director of Planning and Plant, said that workmen found that "the pipes were full of marble."¹

The pools lacked an automatic chemical feeding or monitoring system, making it difficult to maintain the chemical balance of the 375,000 gallons of water. Chemical imbalances not only wreaked havoc with the marcite surface,² but also caused corrosion of the piping and equipment.³ By the spring of 1977, the pools' filters and pumps were operating at only 50 percent of their original capacity.⁴ The destruction of the filtering and circulation systems, accelerated by the presence of calcareous marcite silt, made maintenance of chemical balance even more of a problem.

A report on these problems, co-authored by SMU's athletic director, Harry W. Connelly, and director of plant, Foster Jacobs, stated, "The combination of marcite surfacing with D.E. [diatomaceous earth] filter with no automatic chemical monitoring system, processing the amount and nature of our water spells

trouble." (appendix exhibit 1)⁵ Yet at the time the pools were designed, both automatic chemical control and efficient filter systems were commonly in use.⁶ Although the use of marcite rather than ceramic tile, the more common institutional finish, had probably allowed the Commonwealth to build the pools at a substantially reduced cost, omission of an automatic chemical control system and the installation of a less efficient filter could only generate small short-term savings. Indeed, when an automatic chemical monitoring and feeding system was installed during the repairs eight years later, it cost \$5,338.⁷

In their report, Connelly and Jacobs asserted, "It is impossible for one man to service 375,000 gallons of water daily by hand."⁸ Although some may disagree with the strong wording of their statement, such servicing would in fact be difficult to manage. Hand monitoring and introduction of chemicals may also result in surges of high chlorine levels and low PH levels. Large amounts of chlorine are highly corrosive; water having a low PH will attack pipes and surfaces.⁹ In large semi-public pools, large bathing loads also contribute to fluctuations in a pool's chemistry.¹⁰ The monitoring of chemicals, which must be done several times daily, is usually assigned to lifeguards--positions which have frequent turnover; therefore, the monitoring is not done in a consistent manner.

The manufacturer of marcite recommends that pools lined with it be drained annually for cleaning. Thus, every year the SMU pools were filled with raw water and the balancing process had to begin anew. Each time the surface sustained further damage before a balance was achieved.¹¹

Marbelite plaster surfaces are mixtures of plaster and white Georgia marble. The compound is calcareous and alkaline in nature.^{11a} When the chlorine level in a pool is high, the finish will "act like a giant alka-seltzer tablet."^{11b} When the calcium hardness in the water is low, the water will pull calcium right out of the plaster.^{11c}

Under the best of circumstances, marcite finishes have relatively limited lifespans. One contractor specializing in marcite pools considered 15 years a good length of service from such a finish.¹² Much depends, however, on the quality of the application, the mixing of the material, and the water chemistry to which the surface is subjected.¹³ (That the SMU marcite began to detach from the concrete shell after only six years also indicates that the original application was deficient.¹⁴) Once a marcite finish has deteriorated, it must be wholly replaced. Replacement costs always exceed the cost of the original application because the old surface must be entirely removed, usually by sandblasting.

Repairs

In the spring of 1977, SMU administrators began seeking funds to repair both the swimming and diving pools in the university's physical education building. In the summer of 1977, SMU received an appropriation of \$200,000 for the repairs from the governor's special emergency fund. The Bureau of Building Construction waived its right to supervise the project in order to expedite the work. SMU itself opened bidding on the repairs almost immediately.¹⁴

Extensive repairs were necessary to bring the SMU pools up to standards. Corrosion had taken a toll throughout. All of the above ground piping was replaced. Pumps were equipped with new propellers.¹⁵ Corroded heaters that had supplied the pools with erratically fluctuating temperatures¹⁶ were replaced.¹⁷ The worn D.E. filter was removed and a more efficient sand filter installed.¹⁸ New hand vacuum cleaners replaced the automatic vacuum cleaners that were at the point of requiring repair for the third time.¹⁹ Before refinishing the concrete shell, the badly deteriorated marcite had to be removed. The application of the marcite had been so inconsistent that in some places it could be chiseled off easily, while in other areas a jackhammer was necessary.²⁰ The pools were then resurfaced with ceramic tile.

Part of the \$200,000 appropriation SMU received from the governor's special emergency fund also paid for alterations to compensate for poor diving board and roof vent designs. \$18,000 paid for roof repairs necessitated by construction methods typical of those used on other SMU buildings.²¹

Altogether, repair costs for the SMU pools totaled \$175,254.00. Especially in light of original construction costs, these costs are inordinate. The original contract for construction of the entire physical education facility, awarded in June 1969, totaled \$2,624,000, a sum that includes funds for site preparation, foundation, exterior structure, and roof; a large gymnasium; team, conference and training rooms; equipment, laundry, first aid and locker rooms; a concession area; and numerous offices.

Finally it should be noted that, in order to allow for the necessary repairs to be made, SMU had to close its pools--and discontinue related programs--from July 1978 until September 1979.

Under-priced Change Order

Original pool specifications called for a layer of ironite waterproofing underneath the marcite. When the marcite was removed, however, it became obvious that the ironite was absent. Ground water began to seep into the pools, making it impossible to lay ceramic tile without first waterproofing the pools' lower surface.²²

Investigation revealed that a change order for the deletion of the ironite had indeed been processed. (appendix exhibit 2)²³ Marcite itself is a waterproofing material and no sealer should be necessary ordinarily; the ironite would thus have been redundant. This fact was not mentioned, however, in the documents supporting the change order. It was asserted instead--one document refers to an engineer and the marcite manufacturer as sources--that the ironite might very well bleed through the marcite.²⁴ The change order documents proposed to compensate for the supposedly necessary waterproofing quality of the ironite by "densifying" the concrete in the shell.²⁵ Since densification is a troweling procedure that simply brings more of the cement's particles to the surface, its contribution to waterproofing would be negligible.²⁶ Moreover, the percentage of iron filings in ironite is so low that the probability of its bleeding through the marcite would also be negligible.²⁷ The credit allotted the Commonwealth for the change order was about \$9,000 less than it should have been.*

*Means Building Construction Cost (1979 ed.) lists the following figures for metallic waterproofing (including the costs of material, labor, overhead, and profit):

1" thick application on floors - \$2.20 s.f.

5/8" thick application on walls - \$4.50 s.f.

The cost index for 1971, given 1979 costs as 100%, is 58.2%. The pools had 4,780 s.f. of floors and 3,100 s.f. of walls. Thus, the credits should have been:

$(\$2.20 \times .582) \times 4,780 = \$6,118.48$ for the floors.

$(\$4.50 \times .582) \times 3,100 = \$8,990.00$ for the walls.

Instead, the change order gave credits of \$2,772.00 for the floors and \$6,200.00 for the walls. The difference between what the credits should have been and what they were added up to \$8,972.00.

BRIDGEWATER STATE COLLEGE
ATHLETIC FIELDS

Introduction

The Bridgewater State College Athletic Fields are the product of poor planning, fraudulent construction, poor construction supervision, and pressures to occupy and use the fields prematurely. The results are frequently unusable playing fields plagued by an uneven surface, lack of drainage, improper grading, and incorrect dimensions. Although evident at the time, these problems did not affect the decision to accept the work as complete. Investigation by Commission staff and test borings conducted by consultants indicate that subsurface conditions do not meet specifications and virtually guarantee the lack of drainage that is the source of many of the playing fields' problems.

Background

Chapter 633 of the Acts of 1970, approved on August 7, 1970, provides funds for outdoor athletic fields at Bridgewater State College. On August 20, 1970, three months before appointing the designer, the College requested permission to prepare planning specifications and seek proposals for survey work before winter set in. Their goals were to provide the facilities six months earlier than scheduled and to reduce escalating construction costs.¹

The Commissioner of Administration & Finance granted designer approval on September 17, 1970, with a total project cost of \$761,000. One month later the Bureau of Building Construction (BBC) authorized the continued services of designer John Guarino, A.I.A.,² who had completed three design contracts at Bridgewater State College: a feasibility study for the proposed athletic facilities; preparation for athletic facilities; and additional site preparation for athletic facilities.

On May 19, 1971, Walter Poitras, Director of the Bureau of Building Construction, transmitted final plans and specifications for the Bridgewater State athletic facilities to Joseph Granzulis, principal civil engineer for the Division of State Colleges (more recently known as the Massachusetts State College System (MSCS)). While the College was asked to review the documents and return the appropriate sets with their comments, no correspondence in either the BBC or MSCS files indicates that they requested any substantial changes to the working plans and specifications.

In an interview with Commission staff members on June 10, 1980, Lewis Perry, Staff Associate for Planning and Development at Bridgewater State College, stated that the area developed into the athletic fields was constantly wet and there

were early indications that this condition was a cause for concern. Indeed, during the planning stages, Perry had advocated developing a smaller area more thoroughly equipped with drainage systems. Nonetheless, officials at Bridgewater State College returned the plans and specifications with their notations, and John Guarino was notified of final working plan and specification approval on June 14, 1971. The project subsequently went out to bid. Gerald Leone and Sons, the lowest qualified bidder, received the construction contract in the amount of \$561,824 on October 21, 1971.³ Construction of the playing fields began on November 11, 1971 with a scheduled completion date of March 31, 1973, approximately six months behind schedule. Final construction costs totaled \$596,495.22. A certificate of partial use and occupancy was granted on March 22, 1973⁴ and final acceptance received on September 30, 1973.⁵

Construction and Acceptance

Although construction continued on schedule, poor drainage conditions were immediately apparent and correspondence and discussion on the problem became a regular event. Despite several change orders to reduce the water-ponding effects of the drainage problems, the situation remained uncorrected. The athletic fields were nonetheless accepted, and many problems still exist today.

Arthur Berube, Clerk of the Works, for the Bridgewater State College athletic fields, indicated in an interview with Commission staff members on June 6, 1980, that during and after a rain storm, the grade stakes would be below the water level in certain sections of the field, demonstrating that the area would be under water once the field was in place.⁶ In a letter to Walter Poitras dated May 1, 1972, approximately one year before the athletic fields' scheduled completion date, E. Edward Rossi, Assistant Director for Engineering Services at Bridgewater State College, stated:

As you have undoubtedly heard, there is a poor drainage condition in the area of the softball field in the southeast corner of the Plymouth Street lot.

This softball field and the adjacent area drain to a pond hole which has no outlet and is situated in an impervious material such as clay. This condition will keep this field wet and unusable [sic]. In addition this pond hole creates an attractive nuisance for the neighborhood children and should be filled in and replaced with a catchbasin connected to the proposed drainage system.⁷

As the construction of the new athletic fields and facilities progressed, poor conditions continued to manifest themselves. With the fields still incomplete, Catherine Comeau, Chairperson of the Women's Health and Physical Education Department at Bridgewater State College, made the following comments in a letter dated November 3, 1972 to David Flynn, Director of Planning and Development:

We are very much concerned about the condition of the new fields and tennis courts and we hope that before they are accepted they are carefully scrutinized.

Problems which we would like to bring to your attention are:

1. Puddles on tennis courts after rain, which would indicate an uneven surface.
2. Unlevel fields and lack of proper drainage on the fields.
3. Lack of sufficient outfield area on softball fields, that are elevated from rest of area.
4. Lack of growth of grass in some seeded areas.⁸

To alleviate these problems, a change order was executed in the amount of \$9,521.85 to extend the 12" pipeline from catchbasin #11-1 to the softball field at the southwest corner of Plymouth Street, thus allowing installation of additional catchbasins to dispose of the excess water. This did little or nothing to correct the drainage problem. On February 26, 1973, one month before the certificate of use/occupancy was to be executed, Joseph Granzulis, Principal Engineer of the Massachusetts State College System, wrote to the BBC:

The College and this office have been watching the construction of the baseball field near Plymouth Street with a great deal of concern regarding the drainage of this field.

The contractor has had considerable difficulty in working in this area which did not dry out at all during the whole summer. The field is constantly wet, a condition which will prohibit the growing of a good stand of grass much less a field which could be used to play baseball. We have deliberated on this problem at considerable length and feel this baseball field (the only one at the College) will not be usable through the baseball season, unless we have a major drought.⁹

On March 13, 1973, a memorandum from Catherine Comeau, Harry Lehmann, and Edward Swenson of the Bridgewater State College Athletic Department to David Flynn, Director of Planning and Development, officially requested permission to use the newly completed tennis courts. The memorandum also outlined the numerous problems which existed:

We have looked at the new fields and tennis courts which are presently under construction. We have found the tennis courts to be acceptable with the exception of rough areas on the surface of the tennis courts which according to Mr. Berube, Clerk of Works, will smooth out with use. If this is so, then we would accept the tennis courts and as stated in our last letter to you, we request that these courts be made available for our use on Monday, March 26, 1973. We would request that the tennis posts and nets be installed by the contractor by Friday, March 23.¹⁰

Shortly thereafter, on March 30, 1973, Joseph Grazulis, Principal Engineer of the Massachusetts State College System, wrote to Dr. Adrian Rondileau, President of Bridgewater State College, and offered the following response to the College's request to use the tennis courts:

In accordance with the College's request we have asked the Bureau of Building Construction for Use/Occupancy of the tennis courts. Because of the location of the courts we have been asked to include all facilities on the southerly side of Burrill Avenue.

We wish to make it clear that use and occupancy of any facility is not acceptance of the facility as completed and does not relieve the contractor of any liability to complete the work according to the plans and specifications or guarantees required by the contract.

With your concurrence we will execute the Certificate for Use and Occupancy.¹¹

On May 4, 1973, Dr. Rondileau wrote to E. Edward Rossi to indicate the conditions of her approval of the partial use/occupancy:

In reference to your letter of March 30, requesting my concurrence to executing the Certificate for Use and Occupancy of the tennis courts and all facilities on the southerly side of Burrill Avenue, it is my understanding that such concurrence does not relieve the contractor of any liability according to the plans and specifications required by the contract. An inspection of the fields by our personnel did find several conditions that did not at the present time appear to meet specifications. With your assurance that the specific items found to be below specification will be rectified I will certainly concur with the executing of the certificate. Enclosed please find the list of conditions that do not appear to meet specifications.¹²

The following is a summary of the problems as mentioned in Dr. Rondileau's letter:

1. The area between the comfort station and the start of the 100 and the 330 on 220 on the runway of the track collects water and therefore a drain should be installed.
2. Two additional drains similar to the ones installed on the outside of the football field should be constructed in the northern area of the football field where water is also not draining.
3. Underneath the visiting team bleachers additional loam or gravel should be leveled out because water collects in this area to form a small pond underneath the stands. We question the wooden footings under the portable bleachers and their durability in that wet area.
4. All of the fields and the bank in front of the dormitory should have additional grass seed, and gulleys caused by washouts should be filled.
5. Part of the track near the comfort station has to be resurfaced and finished off as it has been damaged during the winter by contractors.
6. Lane lines need to be painted on the track.

Also we have several questions. What progress has been made relative to:

1. The installation of the field event circles, pit, shoot and runways for all of the field events?
2. The need for drainage under the present baseball field or relocation of this field?
3. The electrical service for the comfort stations?¹³

Upon mutual agreement, a certificate of use/occupancy for the tennis courts and all facilities on the south side of Burrill Avenue was executed, effective midnight, March 22, 1973.¹⁴ This certificate of use/occupancy did, in fact, start the clock running on the one-year guarantee period.

On February 8, 1974, Robert E. Allard, Head Administrative Assistant of the BBC, notified the MSCS that the guarantee period would expire on March 22, 1974; if any work performed under this aspect of the contract required replacing or repairing as a result of any work defects, the BBC must be notified in writing on or before March 14, 1974.¹⁵

In response to the BBC's memorandum, the MSCS requested Bridgewater State College to outline any existing problems in writing. The lengthy response by Catherine Comeau dated March 8, 1974 to David Flynn, Director of Planning and Development (MSCS), included the following complaints:

1. Football - Soccer field inside track
 - A. Unlevel grade with depressions and hollows at various places all over the field.
 - C. Cross bar of football goal posts nearest building is not level.
 - G. One zone of sprinkler system on football field will not shut off.

3. Baseball field
 - A. Needs to be rolled. Infield needs to be top dressed.
 - C. Home plate appears to be below specified grade.
4. Practice football fields
 - A. Unlevel grade with depressions and hollows.
 - C. Lawn hydrants above ground near wooded area, and outside southwest corner of fence around football field.
5. Soccer Field
 - A. Unlevel grade with depressions and hollows.
6. Softball fields
 - A. Field nearest water tower has two large rocks in outfield which must be removed.
 - D. Grass cover on softball field (north of ridge separating the two softball fields) shows very poor growth and there are hollows and depressions that collect water.
 - E. Unlevel grade with depressions and hollows on all softball fields.¹⁶

The athletic field guarantee period expired on March 22, 1974 as scheduled. Although the College made their dissatisfaction known within the prescribed time, the Commission could find no indication from the College, MSCS, or BBC files that any corrective work was undertaken, with the exception of two change orders approved in November 1972 and June 1973. Change order no. 3 was in the amount of \$2,525.00 for the installation of six additional open-point catchbasins; change order no. 7, in the amount of \$2,618.62, called for the installation of an additional drain. Neither of these measures corrected the drainage problem. Nearly a decade has passed, and many of the playing fields remain unusable.

Current Condition of Fields

On December 19, 1979, members of the Commission's staff visited the athletic fields at Bridgewater State College to observe the severity of the problems. The fields are not level and have many depressions and hollows that are constantly flooded; one ball field is often completely under water. The large playing fields have puddles and many areas were unusable. On one baseball field, home plate is lower than first base and the bases are not aligned at proper angles.

During the tour, Lewis Perry made several comments to Commission staff about the drainage problems, stating that the conditions are "indicative of non-compliance with the specifications." Perry also stated that, during his tenure as superintendent, he found tombstones in the fields, and that the grading was done by bulldozer without grading stakes.¹⁷ On January 8, 1980, another Commission member toured the athletic fields with Perry, who reiterated the list of problems that beset the athletic fields. Nearly all problems apparent during the construction and acceptance period were more than evident on this visit: graders were not used, there is an inadequate stand of grass, low spots are constantly flooded, and one ballfield is frequently under water. Except in the main football area, there are no drains. The specifications concerning soil contained an apparent typographical error that substituted the word "cleaning"

for screening; the top soil was therefore not screened for large rocks and other debris. On the baseball diamond, the grade lines are quite far off the required specifications, the pitcher's mound is high, and home plate is low.¹⁸

In questioning before the Special Commission on June 11, 1980, Perry was asked about the memorandum written by Catherine Comeau, Chairperson of Bridgewater's Health and Physical Education Outdoor Facilities Committee, to David Flynn, Director of Planning and Development for the Massachusetts State College System, in response to the BBC notification that the one-year guarantee period was due to expire:

Q. Now, sir, what I would like to do is ask you some questions about some of the items which were listed by Miss Comeau on Perry Exhibit No. 3. In order to save time, what I am going to do is run through quickly a number of references to unlevel grades with depressions and hollows at various places which appear. I think it's fair to say under every item with the exception of Item No. 2, for Items No. 1 through 9, specifically the football, soccer field, inside track, the practice football field, the soccer field, the lacrosse [sic] field and the archery area, sir, would you agree with Miss Comeau's in this exhibit with respect to each of those particular fields that as of March, 1974, they did have unlevel grades with depressions and hollows?

A. Yes, sir.

Q. Sir does that condition exist today with respect to each of the fields so identified in the document which is Perry Exhibit No. 3?

A. Yes, it does.²⁰

Perry concluded his testimony by answering questions about the grades of the baseball field:

Q. Can you describe for us, in terms of grades, where the home plate is in relation to first base? In other words, in terms of elevation, are they at the same elevation?

A. No. The home plate is lower than the first base.

Q. So, it's fair to say in order to get from home plate to first base you have to run up hill?

A. Slightly, yes.²¹

Test Borings

To determine the cause of the problems plaguing the Bridgewater State College playing fields, the Commission retained the services of James C. Deveney, a professional engineer. Deveney recommended that test borings be taken at random locations throughout the playing fields to investigate soil composition below the surface.

Accordingly, on February 4, 1980, nine borings were made at locations determined jointly by the Superintendent of Buildings and Grounds, the boring company representative, and the Commission's consultant. The soil samples were analyzed by Bay State Test Boring, Inc. and the results were reviewed by the Commission's technical staff.

According to the contract documents, the surface material of the playing fields was to be excavated until the natural subsoil was exposed. This requires removal of all foreign material. For example, if a section of the playing field had quicksand to a depth of eight feet and a two-foot layer of peat above the natural subsoil, all of the quicksand and peat would have to be removed since these materials do not constitute a proper base for the added subgrade. The contract documents also require that well-graded sand and gravel replace the unsuitable materials, and that nine inches of topsoil would remain after settlement.*

The nine test boring samples obtained by the Commission indicate that the subsurface composition of the current playing fields do not meet the contractual specifications. All nine borings demonstrated excessive topsoil, from one to five feet, with an average depth of over two feet. In only one case did well-graded sand and gravel replace unsuitable materials. Traces of silt, loam and wood fill, with brown fibrous silty peat, were found beneath the excessive topsoil in most areas. Below what was supposed to be well-graded sand and gravel were silt, traces of fibers, and inorganic material instead of the natural subsoil.²³

The following quote from Deveney's testimony before the Special Commission summarizes the results of the test borings:

Q. I think what we will do, since the others have already been marked and are included in the exhibits, rather than going through them individually I think what I will ask you is whether in the case of the substantial majority of the nine borings that were taken with the samples obtained from those test borings do not meet with the specifications under the contract?

A. In my opinion there was only one boring that indicated that the work was done in accordance with or in performance with the contract document, and that was Boring No. 1.²⁴

Lewis Perry also testified about his findings in the course of installing two runways for the field events track area. Preparation for the runways entailed excavating the topsoil, specified to be 9 inches deep, for a length of approximately 80 feet and a width of 4 feet. Perry went to a depth of approximately 4 feet and still could find no subgrade material.²⁵

Because of the excessive topsoil on the playing fields, there is inadequate drainage. Without proper topsoil composition and level, water will remain in the surface instead of filtering through into the natural subsoil. As Deveney stated:

I think the fundamental cause of the water condition, the predominance there at the Bridgewater State College athletic field, was because proper subsoil was not installed in accordance with the contract documents. You need gravel to provide runoff of the water. That is the surface water; otherwise you will have ponding. Further, I concur with the superintendent's testimony that the levels were incorrect and improper...²⁶

Conclusion

Although drainage problems historically plagued the athletic field areas, however, the planning process for the Bridgewater State College playing fields was nonetheless hastened by extreme need for these facilities. With the exception of a minor delay, construction began and finished on schedule. Parts of the field were accepted prematurely, and final acceptance was granted despite the numerous problems existing then and now.

Investigation by Commission staff demonstrates that subsurface conditions of the playing fields do not meet contractual specifications and thus guarantee poor drainage. The unsuitable subsurface material allows for excessive settlement which will only continue in certain areas. Pending legislative funds for corrective work, Bridgewater State College presently has only limited use of the athletic fields. According to the Commission's consultant, the entire playing area must be re-excavated to the natural subsoil, covered with well graded sand and gravel, graded, and then covered with topsoil to maintain a depth of nine inches after settlement. The cost of this corrective work would be approximately four times the original cost of the playing fields contract, about \$2.5 million.²⁷

* According to contract specifications of which the pertinent sections were reproduced as appendix exhibit #19.

UMASS/AMHERST LIBRARY

Introduction

"The world's tallest library" according to the Guinness Book of World Records¹, the UMass/Amherst Library had a total project cost of \$16,840,000, appropriated between 1964 and 1969. In September 1979, the university closed the building after the consulting firm Loomis & Loomis reported that the facade was in danger of "peeling off" in an earthquake. The library currently remains closed to general use; it has been open for use by not more than 500 persons at one time since December of 1979. In 1980, the Massachusetts legislature approved \$2,500,000 for repairs and renovation to the library.

Another consultant's report issued in January 1980 cites serious defects in design and construction. Although the Commonwealth has brought suit against the estate of the architect; the case is still pending. The Bureau of Building Construction has initiated a project for the masonry repairs, with an estimated construction cost of \$1,250,000. This project is currently in the designer selection stage.

Background

The library building consists of a 300-foot tower, with 32 reinforced-concrete columns on its 108' square perimeter, plus a plaza deck measuring 348' x 204', under which are two additional floors. The main library floor is the upper of these two underground levels and has a connecting tunnel to the South College building. Entrances are to this level and to the Plaza deck (exterior). The tower has eight three-story segments, each segment having two floors of stacks and one of study carrels. The library has a capacity of 2.5 million volumes, and was planned as the university's central repository for collections previously kept in the old central Goodell Library and other libraries in the university's various schools.²

Design of the library began in 1964, and groundbreaking occurred in April of 1969. The building was formally accepted on January 21, 1973, with a final construction cost of \$14,485,170.67. The architect was Edward Durell Stone (now deceased) of New York City, the consulting engineer was C. E. Maguire of Waltham; and the general contractor was Daniel O'Connell's Sons of Holyoke. The library is Stone's only public project in Massachusetts while Maguire and O'Connell have each had several other state contracts, before and since. The Bureau of Building Construction (BBC) was the contract-administering agency.

William A. Waldron, Commissioner of Administration, selected the architect on December 18, 1964 to prepare a preliminary report and study for the UMass/Amherst library.³ A fee of \$40,000 was allocated from a BBC fund established by Chap. 640 of the Acts of 1964 (Item 8065-82) for feasibility studies and design work up to the preliminary stage. Before the creation of the Designer Selection Board (DSB) in 1966, it was standard procedure for the Commissioner of Administration to choose project architects. After Stone completed the study and the legislature appropriated \$600,000 for the design, UMass/Amherst president John Lederle wrote directly to Commissioner John J. McCarthy, requesting that the architect's services be continued on the rest of design work (thus bypassing selection by the newly created DSB) "without delay as this [project] has the highest priority in our building program."⁴ Commissioner McCarthy approved Stone's continuation on October 27, 1966.⁵

The Amherst library is one of the ten most extremes cases of gross increase in estimated construction cost (ECC) among the 940 BBC projects the Commission investigated. The earliest known ECC is \$8,600,000, which appears on the A-5 letter to the designer dated March 7, 1967.⁶ On April 4, 1967, Stone informed the BBC that the ECC at that time was in fact \$12,908,855 (including a 9 percent contingency)⁷, and returned unsigned copies of the proposed contract. On May 22, 1967, a revised contract was executed with an ECC of \$12,300,000.⁸ It was and is standard practice for the BBC design agreements to stipulate that the scope of work may not increase the ECC without prior written approval of the BBC's director, and that the designer must notify the director whenever the ECC exceeds the approved amount. This was not stated in the contract or A-5 letter of appointment sent to Stone, but was later added as an amendment on August 24, 1967. This is the only case of such an omission or amendment that the Commission has found. Working plans were approved on November 1, 1968, at the same ECC; the lowest bid received was \$14,436,515, however, giving a total construction cost increase from design to contract award of \$5,836,515, or 68 percent.¹⁰

Because of the complexity and uniqueness of the library's plan, Stone requested during contract negotiations that the designer's fee be set at seven percent. He cited the lack of repetition in floor plans, several technical problems in the design of the tower which "demand more than the typical library building...", the site conditions and the need to tie the building into its neighbors, and the structure's monumental and landmark status on campus.¹¹ The BBC engineer, James Cusack, felt that the library was not as extraordinary as Stone claimed, however, and contested the assertion that the floor plans did not repeat. Cusack recommended that the fee be set as usual on the BBC sliding-fee scales, or 4.7 percent.¹² With an ECC of \$8.5 million, Stone's proposed fee of

7 percent represented an increase of \$186,000 over the usual rate. In March 1967, the dispute was settled with a compromise fee of 6.25 percent.¹³ As of the date of last payment in 1975, Stone received \$909,619.17, including a credit of \$13,074 from the \$40,000 study fee previously paid.

Bids for construction were received on January 30, 1969; the lowest bidder was Daniel O'Connell's Sons at \$14,264,000 which included allowances in four sub-bid areas: metal windows, waterproofing, glass and glazing, and escalators. When three of these areas were re-bid on February 19 (with a net increase of \$300,214 over the allowances, or 59 percent), and two alternates (including the deletion of the allowance for escalators) were deducted (net deduction of \$143,081), O'Connell's adjusted contract price increased to \$14,436,515.¹⁵

The total project cost still exceeded the funds available by \$2 million. The designer's contract had the BBC's standard clause allowing the director to instruct the architect to revise the construction documents at no additional compensation to bring the ECC within the approved amount (Article V). The BBC, however, decided to seek additional funding from the legislature. This amount was approved in a special capital outlay act, signed by the governor on April 8, 1969.¹⁶

The contractor was notified to proceed with construction on April 9, 1969, with a projected completion period of two years. The date of substantial completion was January 1, 1973, however, representing a construction delay of 21 months or 87 percent.¹⁷ Although the effective date on the certificate of final acceptance for the library was January 21, 1973, the date of signatures on the certificate are dated 19 months later, August 5, 1974. A BBC memo dated September 9, 1974 (Salice to Poitras) states that this delay occurred because "the original papers were lost by the designer" and that Stone had "changed project engineers three times when this project was being finalized."¹⁸ During this period several problems arose that may also account for the delay:

(1) On June 1, 1973, E. J. Ryan (UMass physical-plant engineer) submitted a long list of deficiencies, including badly fit doors; gaskets, base moldings and desk tops loose or missing; and bad water leaks.

(2) Flooding and water damage occurred in the Mechanical Room in the spring or summer of 1973.

(3) A dispute arose between the architect and contractor regarding adherence to painting specifications (Sept. 1973).

(4) Daily malfunction of elevators occurred from the very opening of the building.

(5) In the summer of 1973, pieces of brickwork began to fall from the facade.

This problem is discussed in greater detail in the following sections. The final construction cost as of the date of last payment (June 22, 1976) was \$14,555,220.92, a net increase of \$118,705.92.19

Description of the Amherst Library Facade.

1) Bricks. The Amherst-library facade is composed of a veneer of water-struck Goodrich brick, bound by Type N exterior mortar, which hangs on the faces of the 32 concrete columns supported by metal brackets, or relief angles. The column facade is one thickness, or wythe, of brick deep, with a cavity behind. Because of the triangular shape of the column exterior, the brick face panel acts as a "folded plate" rather than as a plane. Between columns and windows there are two wythes of brick, the interior wythe resting on the concrete floor slab, the exterior resting on short metal angles, attached to the floor slab. Through headers -- bricks at right angles -- connect these two wythes.

Special lipped brick is used on the first course above each metal bracket, to hide the metal edge of the shelf and the wider gap under the first course. Two types of lipped brick are used, the majority of which have one straight lip on the long side, the rest having a lip along two adjacent sides, to be used at the apex of the column. Although these lip bricks were designated to have been pre-molded, many, especially those with lips on two sides, were sawcut on the site. This sawcutting resulted in kerfs, or overcuts, in many lip bricks which figure in later investigations of the brick problems.

2) Relief angles. Six different shapes of metal relief angles are used to support the 30-foot brick panels. Two 5-foot lengths are used along the column faces; two others are used at the four "re-entrant" corners of the building; and two irregular short shapes are used to support the exterior wythe of brick on either side of the windows. All of these metal brackets are attached to the column face or side of the floor slab by wedge inserts bolted into the concrete.

Factors relevant to the safety of the relief angles include: the strength of the bolts and the concrete; the rotation of bolts under the weight of the bricks; deflection of the shelf under the weight of the bricks; and the width of the shelf and its distance from the face of the column.

3) Expansion joints and caulking. To accommodate differential movements between the facade and its support, the wall is divided into ten sections, each about 30 feet, or three stories, high. Since the brick panels are inflexible and noncompressible, underneath each metal support is a wide expansion joint. This joint is filled with a compressible filler behind, and a waterproof caulking material in front. If the expansion joint is filled with a noncompressible material such as mortar, as was done at Amherst, the pressure of unrelieved

movement will build up in the wall panel and its supports. Or the soft joint may be designed or built too narrow, and will close up over time, creating the same conditions. Finally, a related matter concerning pressures on brick panels is that all other elements to which the brick is attached must allow for movement.

4) Wall cavity. The Amherst facade is designed so that the face of the independent brick panel is seven inches in front of the face of the concrete column. The cavity behind the brick is about 3 and 1/2 inches wide; a two-inch thickness of rigid insulation (polystyrene) is attached to the face of the concrete. The rest of the cavity is empty.

5) Flashing and weep holes. Water may penetrate through the slightly porous brick, or through cracks in the brick, entering the wall cavity. The water is carried away by metal flashing and weep holes placed above each bracket. This is to prevent accumulation of water and the resultant freezing, cracking and heaving of bricks, mortar, and concrete.

6) Wall ties. Wall ties placed at regular intervals throughout the panel prevent the brick panel from toppling over and falling, particularly under pressure from the wind. Noncorrosive metal ties are inserted into long, dovetail-shaped slots in the concrete; the other is embedded in the mortar of the brick panel.²⁰

Construction and Design Defects

Problems with the Amherst library's brick facade have occurred intermittently for the last five years. Pieces of brick are found on the plaza; a study is performed and perhaps some repair work is done; then the problem apparently desists. This scenario has occurred three times: in 1973, 1975 and 1979.

The first episode of falling bricks occurred in the summer of 1973, just after the library opened. On August 29, 1973, Kris K. Jain of C. E. Maguire and Leo Liberman of the UMass physical-plant department examined the condition of the library's facade. Maguire's report to the architect stated that the breakage was primarily on the south face of the building, closest to the metal brackets and the apex of the column. The expansion caulking "appeared fairly satisfactory," and the problem was not considered to be structural (due to movement of the building's structure). The most likely cause of the breakage was the omission of weep holes in the first course of bricks, which led to the entrapment of water and subsequent freezing. The omission of weep holes was the contractor's responsibility²¹.

On October 5, 1973, the contractor personally inspected the protruding brick. The weep holes were found to be present and "generally in order." A mason replaced four bricks that had broken. The general contractor attributed

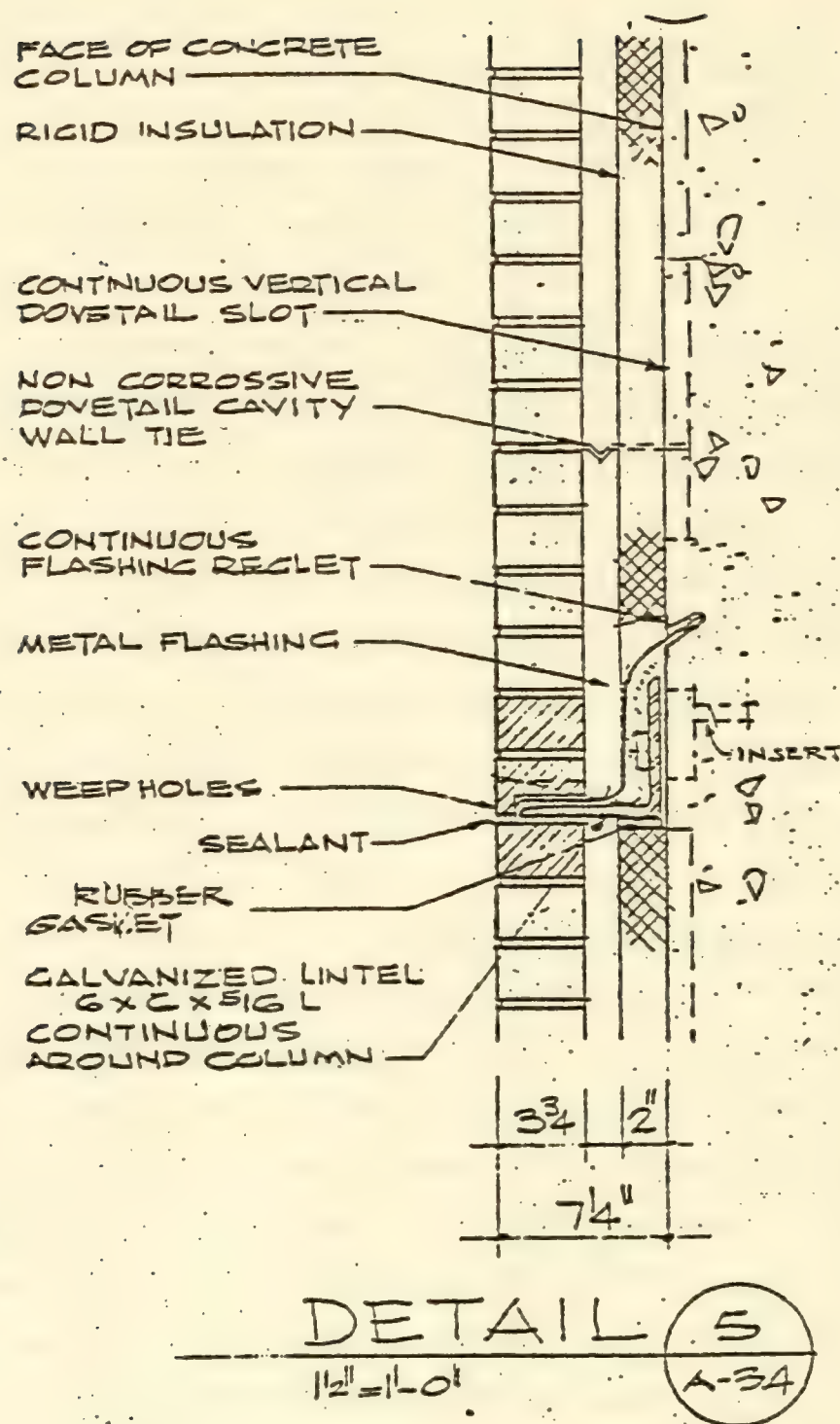


FIGURE 2-3 ARCHITECTURAL DETAIL 5/A-34 SHOWING RELIEF ANGLE AT COLUMNS

Illustration from Simpson, Gumpertz and Heger report, showing designed condition of library wall.

breakage to the sawcutting of some brick which was required by the design of the system.²²

No further problems were reported until November 12, 1975, when the university notified the architect that "Two weeks ago another instance of falling brick was reported as narrowly missing a pedestrian." A telescopic survey "located 38 instances of defective brick" on the east, west and south faces. On December 12, Roger Karlsson, of Edward Durrell Stone's office, inspected the facade. He found that the "nature of the damage is a shearing off of the face of the brick directly over the control joint. In some areas, the shearing has carried through three courses vertically." Although water damage was not evident in the wall, mortar was found underneath the metal angle behind the caulking, and caulking in some joints showed wrinkling and extrusion caused by compression. Sawcuts in apex bricks often resulted in overlapping kerfs (overcuts), weakening material at the apex.²³ The contractor then proceeded with emergency work to repair south face brick and remove loose pieces of brick on the east and west faces. These repairs cost \$7,156.²⁴

On February 12, 1976 Ronald Jackson, P.E., representing C.E. Maguire, made an inspection of the building along with representatives of the architect, the BBC, and UMass. Jackson reported that the major cause of the problem was the presence of mortar in the expansion joints. This resulted in "a transfer of load downward of the entire weight of the brick facade instead of having this weight relieved at every third floor level as was the specific intent of the contract drawing and specifications...." The weakened sawcut apex brick broke under the sheer force caused by the improper distribution of weight. Had the control joints been properly constructed, "the damage would not have occurred since the brick facade panels would have been free to move independently of one another during conditions of thermal expansion and contraction. Also, the vertical load on any one brick panel...would never be greater than the actual dead load of the panel itself." Pressures caused by the shrinkage of the concrete columns was ruled out as a cause since the bricks located on either side of the windows, attached to the floor and ceiling slabs, showed no signs of breakage. Since some sawcuts in the brick were found to be overcut or the lips were too narrow, Jackson concluded that a lack of quality control in the sawcutting resulted in unnecessary weakening of brick lips. Jackson therefore recommended that the mortar be removed from control joints, that sawcut bricks be replaced by preformed brick, and that the attachment of relief angles to the concrete be checked and, if necessary, supplemented with additional bolts.²⁵

On February 27, 1976, the architect reported the substance of C.E. Maguire's findings to the BBC and provided specifications and cost estimates for remedial work. The contractor was to restore the expansion joints to the designed condition; this work consisted of removing the mortar, substituting preformed brick for all sawcut brick, and replacing any defective relief angles. The total estimated cost of this repair work was \$181,000.²⁶ Why this remedial work was never done is unclear. In November 1976, Daniel O'Connell's Sons began replacing broken bricks on the east and west faces, as had been done on the south face in 1975. This work was estimated to cost \$15,000, with O'Connell's agreeing to pay not more than half. The final cost was \$16,132, of which the state paid \$7,500.²⁷

During the next two years, two inspections were made. In August of 1978 the protective barrier around the building was removed.²⁸ In May of 1979, however, a library clerk found four pieces of brick on the ground near the building²⁹. Consequently, on July 18, 1979, George Norton, physical plant director at the Amherst campus, authorized consulting engineers Loomis & Loomis to evaluate the brick facade and relief angles.* Unlike previous studies that had focused on the bricks, this study examined the steel relief angles and bolts. Issued on September 4, 1979, the report stated that the metal supports were seriously inadequate:

- A. "The concrete insert assemblies...are grossly inadequate to safely support the 4" brick veneer using a pair of inserts per panel of veneer...."³⁰
- B. Deflection of the middles and ends of the relief angles is "about 15 times more than what I've seen previously reported," and such deflection should have closed the horizontal expansion joint.³¹
- C. Differing deflection of the ends of the two relief angles at the apex of the column "sets up high local stresses in the brickwork at the apex."³²
- D. "The large pullout forces on the inserts is extremely dangerous and extreme measures should be taken immediately to protect life and property. ...Based on my conclusions, I would expect an earthquake loading to 'peel' this building of brick veneer."**³³

Based on the Loomis report, the university immediately closed the library on September 5 and started moving books to the another building.³⁵ An on-site visit conducted on September 19, 1979, with representatives of BBC, UMass, C. E. Maguire, O'Connell, Loomis, and engineers LeMessurier and Thompson & Lichtner present, examined relief angles at the 15' and 45' levels on the library's south face. Mortar over 2" thick was found underneath the angle,

*Loomis & Loomis had recently done an evaluation of another UMass-Amherst building, the Campus Center garage, that had been experiencing spalling (a kind of chipping) of concrete from its structural support beams.

**The university did seek the opinions of two other engineers, Gilbert Small & Co of Needham, Mass. and John L. Agnoli, of East Longmeadow, Mass. Their reports, submitted on September 7 and 5 respectively, although brief, did not dispute Loomis's findings. Small concluded that "a potential structural defect may exist in the lintel [Shelf] support...."³⁴

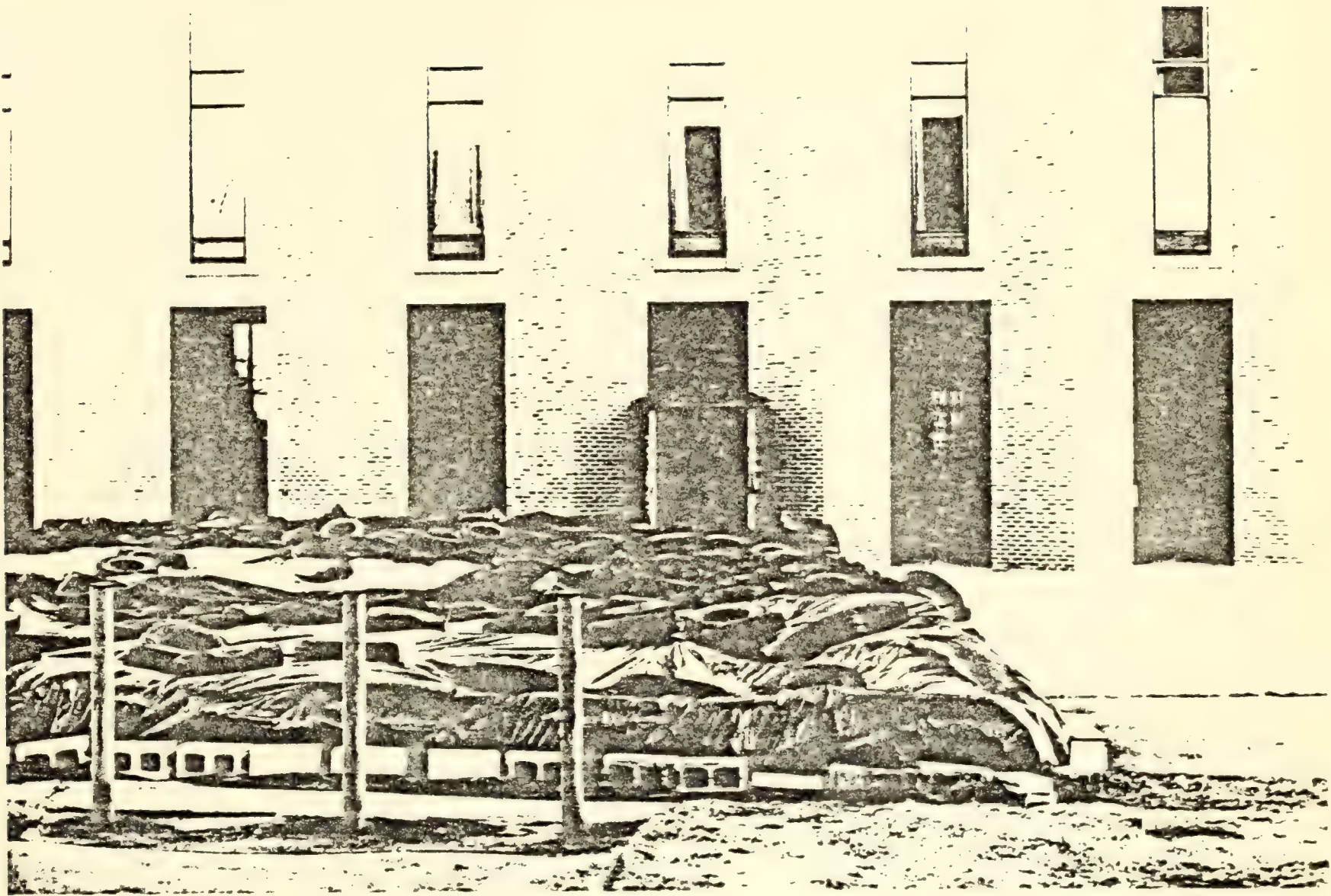


PHOTO: Entrance of UMass/Amherst Library, showing hay bales placed on plaza.

indicating that "the relief angle was essentially in contact with the top course of brick below the relief angle." The contractor apparently laid the mortar in this space to make a flat surface for the first row of brick of the next panel, and later only partly cleaned out the gap.³⁶

On October 19, 1979, the BBC hired the Cambridge engineering firm of Simpson, Gumpertz and Heger (SGH) to conduct a thorough investigation of the library facade. Submitted on January 11, 1980, their report addressed the problems associated with the brick and mortar, relief angles, wall ties, the plaza's structural strength, and use and repair of the building.

1. Bricks and Mortar

The brick spalling is confined to brick, adjacent to the structural relief angles, which typically support 30 ft. high sections of brick veneer on column and corner faces. The spalling results primarily from stress concentrations produced by mortar placed in "soft joints" below relief angles. This was done to facilitate erection of the facing, and was intended to be completely raked out after the mortar joints above hardened. In many locations, however, all of the mortar was not removed, thereby producing the hard spots and stress concentrations. Breakage is

worst in lip brick, which are used to conceal the relief angle, but are also more susceptible to breakage than typical brick due to their geometry.³⁷

SGH stated that "The presence of mortar in the soft joints causes severe stress concentrations in the masonry by restraining free movement,"³⁸ and that the highest stresses occur in the mortar in the "soft" joint. Several factors contributed to the placement of mortar in the expansion joint: "The spalling problem generally occurred because of the contractor's failure to remove all mortar from the soft joints. However, this problem arises because of the impractical detail provided in the amended design which required the temporary support of the initial brick courses on each relief angle during construction."³⁹

"Documents indicate the contractor requested, and the designer permitted, a change in the size of relief angles from 6 in. X 6 in. X 5/16 in. to 5 in. X 5 in. X 5/16 in. during the shop drawing phase of construction. This was probably requested to avoid possible interference between the tip of the angle and the inside of the lip brick by creating a larger tolerance. However, as a result of this change, it was impossible to place brick on the 5 in. angle shelf without temporary or permanent support from below, such as the mortar noted. Since the brick face measured 6.5 in. to 7.9 in. from the column face, virtually all of it required some support as it was first built. The above situation could have been alleviated by proper provision for shimming the relief angles over their full height at connection points, but this was not done."⁴⁰

Moreover, SGH continued, even if the joints had not been filled with mortar, spalling or other forms of deterioration would probably have occurred, because (1) the relief joints were not designed wide enough to allow for normal movement of the brick panels; SGH also noted that in several places where there was no mortar in the joint, the gap had closed, resulting in the compression of caulking and the breakage of brick⁴¹ (2) sawcut bricks "are very susceptible to cracking"⁴² (3) insufficient weep holes were provided or were caulked shut; and (4) flashing does not extend to the outside face of the brick (43). The latter two items do not currently pose problems, but may result in water problems in the future.⁴⁴

2. Relief Angles

(a) "Insert supports for relief angles do not have the capacity to provide adequate assurance that relief angles can safely carry the weight of a 30 ft. height of masonry."

(b) "Relief angles on column faces have excessive stresses because insert spacing is too great and brick far out on the shelf leg."⁴⁵

SGH concluded that "the insert column provided for support of masonry veneer at typical columns have inadequate strength, based on conventional design assumptions and normally used safety factors." SGH's observations and calculations regarding the strength of the metal angles and inserts, moreover, were "in essential agreement with the results obtained by Loomis and Loomis,"⁴⁶ although they did not agree that the veneer would probably fail by peeling off the building.⁴⁷ SGH identified several factors that may increase the strength of the wall, including the presence of mortar in the expansion joint⁴⁸ and the possible contribution of support by relief angles near windows or at corners. While the presence of mortar restricts movement, as noted above, SGH also notes that the brick itself

has enough column strength to support safely its own weight over the full 30 stories but the deformation involved in such support is uncertain because both the existing gap width and the amount of mortar in soft joints below the relief angles vary.⁴⁹

However, these factors do not increase the strength of the facade sufficiently to accept the existing connections as adequate for long-term strength:

Based on our calculations and observations, our best estimate of the probable safety factor against failure of the veneer is about 1.2 to 1.4 without any help from direct support through partial bearing down to the plaza level. This is too low to avoid strengthening for long-term conditions, but high enough to permit use of the building, with the precautions described in Chapter 9, during the time needed to design and construct remedial work.⁵⁰

3. Wall Ties

SGH's calculations for the loads on wall ties, which prevent the wall panel from falling away from the face of the column, showed that "the ties have adequate strength to resist overturning effects, if they are properly embedded in the masonry and attached to a dovetail slot."⁵¹ In the course of investigation, however, partial voids were observed in the mortar under the embedded end of several wall ties, making the connection less secure, and one tie was not secured to the column⁵². Such observations "indicate a need for further investigation."⁵³

4. Plaza structural strength

Although SGH thought such a catastrophe unlikely, if the brick veneer failed, the plaza deck could support the loading conditions.⁵⁴ People on the level beneath the plaza deck would therefore be out of danger should the wall fail.

5. Use and Repair of Building

"Because of the questionable strength of the existing inserts and the danger of falling brick chips, access to the library should be prohibited from plaza level doors, and limited to the entranceways and tunnels below plaza level, until

the relief angle supports are strengthened and the brick problem corrected. Plaza level doors may be used as emergency exits."⁵⁵

Other than the precaution of keeping the library plaza closed, SGH does recommend that "it is safe to use the library."⁵⁶ Although SGH's report was submitted in January 1980, the University has still not (at the time of this writing) rescinded its policy restricting use of the library to not more than 500 persons at one time.⁵⁷

6. Recommendations

The repair procedure that SGH suggested⁵⁸ called for a contractor to (1) extend the shelf leg by at least 1" (thus restoring the effective shelf width to the 6" originally called for in plans); (2) weld an inclined plate to the horizontal and vertical legs, behind the brick in order to strengthen the bracket; (3) add a drilled-in bolt attaching the bracket to the concrete column for at least every 16"; and (4) remove all mortar from expansion joints and increase the expansion joint width to at least 1/2" by sawcutting or replacing top course of brick of lower panel. All lipped brick would be replaced by special thin brick. Weep holes are to be provided wherever necessary, and flashing replaced that extended to the outside face of the brick. To avoid disassembling the entire brick facade, repairs would begin at the top level of the library and proceed sequentially in 24" segments along each relief angle.

SGH's remedial program also called for additional testing of the existing inserts and angles before starting the repair work. SGH suggested that "such tests be carried out as mock-ups simulating actual conditions" and that the test load be taken to determine "ultimate failure of the inserts in combined shear and pullout."⁵⁹ SGH also recommended that an investigation be carried out at this stage to determine the probable extent of wall-tie deficiencies.

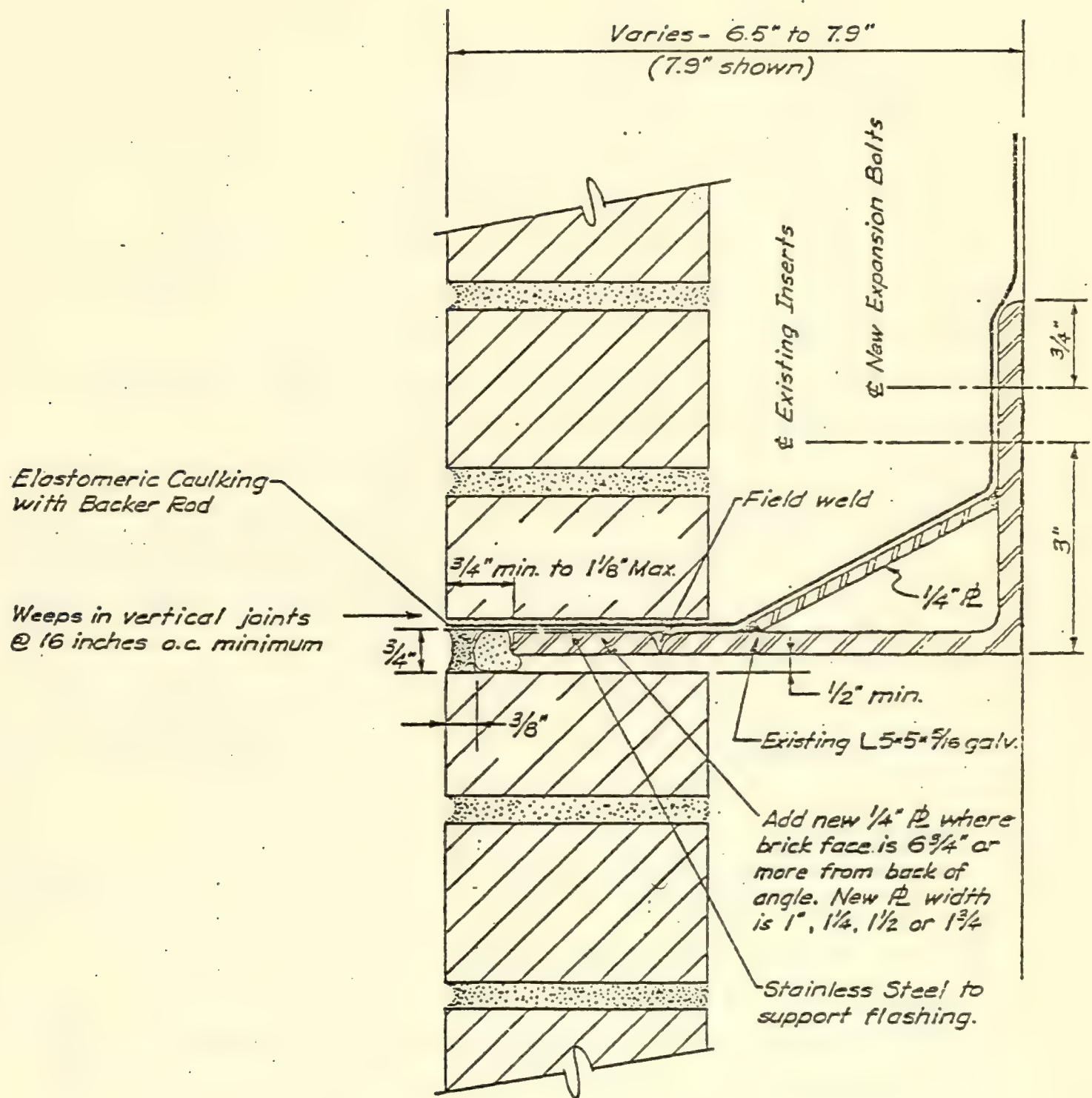


FIGURE 9-1

REMEDIAL WORK AT RELIEF ANGLES IN BRICK VENEER OF TYPICAL COLUMN

Illustration from Simpson, Gumpertz and Heger report, showing recommended repair procedure.

E. Repairs and Remedies

In 1976, the legislature approved a wording change that made the balance of the \$2,000,000 voted in 1969 available for "certain masonry repairs."⁶⁰ As noted above, however, this work was never done, and the amount of money in the account remained constant for the past four years. At the end of fiscal year 1979, the balance was \$268,261.⁶¹

In 1980, the legislature approved an additional \$2,500,000 "for repairs and renovation to the library buildings."⁶² Of this amount, \$1,350,000 is slated for corrective action on the masonry veneer, making the total project cost for repairs approximately \$1,618,000. The remaining money is intended for interior renovations that are not connected with the brick problem.

The repair work has been designated a BBC project with an estimated construction cost of \$1,250,000.

The scope of work calls for the structural engineer to:

determine causes and remedies for structural distress in the masonry work and prepare contract documents and supervise construction for repairs to the library. Structure is a 28-story reinforced concrete frame covered with a brick veneer. A recently completed engineering study has examined and documented existing conditions and evaluated structural movement. Pertinent statistical information will be extracted from the study and provided to the three or more finalists recommended by the DSB for this project.⁶³

In September 1980, the DSB named three finalists out of a field of eleven.

Although fee proposals have been solicited from these three, the final selection has not yet occurred.

Conclusion

In February 1980, the Massachusetts Attorney General's office filed a civil action in Suffolk Superior Court against the architect's estate and the successor firm to Edward Durell Stone Associates. The civil action included six claims, including breach of contract, negligence and breach of warranty, but did not mention a sum as damages for the cost of repairs, investigations, removal of books, and loss of use of the facility. The contractor is not a defendant in the civil action.

At the time of this writing, the Commonwealth's action against the designer is still pending.

THE TILLSON FARM POWER PLANT

Introduction

The Tillson Farm power plant was designed and built in the late 1960s and early 1970s to serve the heating and electrical needs of a still-growing UMass/Amherst campus. A 1.5 mile-long underground "tie line" was to deliver steam produced at the plant to campus heating systems and generators. In the winter of 1974-5, the plant was started up and partially operated, but was closed in April of 1975 because the \$3 million tie line failed to function properly.

Although the plant itself is in operating condition, it has been idle for over five years because it could not deliver the steam to the campus. Four portable space heaters were installed in 1975 to prevent the pipes from freezing. The plant was never properly deactivated, and "it appears that many of the instruments, valves and piping have not been maintained but only turned off in 1975 and left to corrode and rust."

In 1977, the university trustees decided to put aside the \$9.3 million facility and spend an estimated \$2.5 million to upgrade the existing coal-burning plant. (Sharply decreased enrollment and energy conservation measures in the 1970s had reduced estimates of energy needs.) 1976 estimates of the cost to repair the Tillson power plant ranged as high as \$6.3 million. Although the BBC brought suit for \$7 million against the designer of the power plant, the Commonwealth received a settlement of \$975,000.

Background

In the late 1960s and early 1970s the enrollment at UMass/Amherst was projected to eventually reach 35,000 students.¹ The legislature approved \$120.6 million for the construction of academic buildings in the years 1962-1971;² in addition to this amount, the UMass Building Authority during this period spent \$81.5 million for 25 dormitories, 4 dining halls, a stadium, and the Campus Center.³

A coal and oil-burning plant at the center of campus, capable of producing 420,000 pounds of steam per hour, served the steam heat and electrical power needs of all campus buildings, academic and residential.⁴ Steam is distributed through underground conduits directly to buildings for heating purposes, or to steam-turbine generators for the production of electricity. Because the system is so extensive, constant upgrading has been necessary. The legislature has made yearly appropriations since 1946 for improvements to the Amherst utility

system: from 1960 to 1967, \$6,767,000, an average of nearly \$1 million per year.⁵ The Boston firm of Jackson & Moreland (J&M) designed many of these improvements, although work was also done by Whitman & Howard and by Anderson Nichols.⁶ A number of studies were done during the 1960s to assess the future energy needs of the UMass campus in light of the expansion of the campus.⁷

In January 1967, Jackson & Moreland was appointed to perform a feasibility study for the new power plant at Tillson Farm, located 1.5 miles from the center of the campus.⁸ This new plant was intended to replace, rather than supplement, the existing coal plant which was not only old, but failed to meet air pollution control standards.⁹

In 1969, the trustees voted to proceed with the new plant. Discussion at the meetings of the UMass Board of Trustees in February 1969 indicated that

a serious problem of air pollution has arisen in connection with the high rise buildings in the center of campus, including the new library. Smokestacks from the power plant are so located that effluent may enter the air intake of the Library, creating a health hazard. The issue was described as whether to construct a new 350 foot stack for the power plant in the rapidly congesting "Gulch" area or rebuild the entire plant on the Tillson Farm property.¹⁰

In April, upon recommendation of the School of Engineering staff, the Master Planning Committee of the university, the BBC, and the staff of the physical plant department the board concluded that (a) the utility system should be converted from coal to oil and natural gas, and (b) the plant should be relocated to the Tillson site. Thus the board voted that

the University construct a new oil-fired boiler plant (with provision for use of gas as a secondary fuel) along the railroad siding at the Tillson Farm in Amherst, using the existing coal-fired plant as a standby facility for the duration of its useful life.¹¹

The legislature had already voted funds amounting to \$3.75 million in July 1968 for improvements to the steam plant and the utility-distribution system; in August 1970, \$9 million was approved for an entirely new facility.¹²

Jackson & Moreland was appointed designer through continued services in 1969.¹³ As ultimately designed and built, the project consisted of four separate contracts, summarized as follows:¹⁴

<u>Contract</u>	<u>Est. Cost of Constr. (ECC)</u>	<u>Last ECC</u>	<u>Orig. Contract Price</u>
#13 Boiler Plant	\$2,500,000	\$4,750,000	\$3,352,500
13A Steam Generator & Appurtenances	1,650,000		1,049,022
13B Combustion & Feed Water Control Systems	60,000		43,156
16 Tie Line	3,777,000	4,350,000	2,988,000
	<u>\$7,987,000</u>		<u>\$7,432,678</u>

Design was completed in 1970, and construction contracts were awarded to general contractors as follows:¹⁵

	<u>Construction Award Date</u>	<u>Contractor</u>	<u>Orig. Contract Price</u>	<u>Final Cost of Construction</u>
#13	2/28/71	E. J. Pinney	\$3,352,500	\$3,582,975
13A	3/10/71	Riley Stoker	1,049,022	1,613,545
13B	3/18/71	Honeywell, Inc.	43,156	63,371
16	8/09/71	Holyoke Valve & Hydrant	<u>2,988,000</u>	<u>3,158,880</u>
			\$7,432,678	\$8,418,766

Construction for the boiler-plant building was substantially complete as of December 4, 1974: two certificates of substantial completion for the tie line contract were issued, one effective as of December 5, 1973, the other effective October 16, 1974.¹⁶

The plant (contracts #13, 13A, and 13B) consists of three oil-fired boilers, one or two for use at any given time and one for backup. Two storage tanks hold a 21-day supply of fuel. A 1.5-mile underground tie line was intended to deliver the steam to campus buildings. The tie line conduits consisted of two parallel steel steam pipes ranging in diameter from 20" at the source to 14" at the distribution center; the pipe was covered with 2-1/2" of insulation within an outer steel casing. A separate, 10-inch pipe carried condensate from the line back to the plant. Sections of the pipe were joined by 21 manholes containing bellows-type expansion joints made of corrugated stainless steel. These joints were to absorb movement in the line caused by extreme temperatures and pressures during operation. Gaskets made of woven asbestos cloth treated with rubber lined the interiors of the bellows joints to prevent heat loss and leakage of steam into the manhole.¹⁷

Appearance of Problems in Operation, 1974-5.

As the construction of the power plant and connecting tie line neared completion in the summer of 1974, Jackson & Moreland began testing the system, as is normally done before the delivery and start of such systems. In the boiler-performance testing, problems of wet steam became apparent. J&M reported to BBC that

An abnormal condition appears to exist somewhere in the approximately two-mile run of underground piping which periodically is causing visible water carryover at the campus distribution center. As a consequence, the University cannot utilize the steam from the Tillson Farm Boiler Plant as a supply to their turbine generators until the magnitude, source, and nature of the water carryover problem is determined and as necessary, corrective measures taken. At the present time, the cause of the problem cannot, with the data available, be traced to either design deficiency or equipment malfunction.¹⁸

At the request of the BBC, J&M submitted a proposal at this time for an investigation which involved installing instruments to measure the temperature and quality of steam in the plant boilers and the tie line. The cost of this procedure was not to exceed \$5,000 for engineering fees, plus \$8,500 for

instrumentation and installation. The instrumentation was to be left in place after testing for future use.¹⁹

The results of these tests, J&M's "Summary Report, Performance Test: Tillson Farm-Utility Tie Line," were forwarded to the BBC in September 1974. A letter from Jackson & Moreland to the BBC dated December 29, 1977, states that this 1974 report indicated that "the tie line was serviceable and successfully delivering superheated steam from the Tillson Plant to the steam distribution center during that period."²⁰ On the basis of this finding, the BBC issued a certificate of use and occupancy for the tie line on October 24, 1974, effective October 16, 1974. Total outstanding work on the attached punch list was \$19,000.²¹

The plant was started up at about this time and operated on a limited basis throughout the winter of 1974-5. Excessive amounts of steam regularly leaked from manholes in the steam line in the vicinity of the Northeast dormitories; at times, the steam was so dense as to endanger the safety of pedestrians crossing Eastman Lane.²² By spring of 1975, the tie line's expansion joints failed and the plant was shut down. In a letter dated February 27, 1975 to the BBC, T. P. deLesdernier, chief utility engineer of the UMass physical plant department, outlined the problems as follows:

- 1.) excessive condensation of steam ("wet steam") in the lines, and inadequate trapping and drainage of condensate;
- 2.) excessive temperature drop between plants, making the steam unusable for generation of electricity;
- 3.) failure (leakage) of several valves in manholes;
- 4.) failure of several expansion joints;
- 5.) excessive steam emitted from manholes;
- 6.) insulation of steam line is apparently inadequate to allow operation of plant at low levels (required by decreased enrollment figures and low summer loads);
- 7.) road grade is such that surface water and road salt enter manholes, causing deterioration.²³

In April of 1975, following the plant's shutdown, representatives of the BBC, J&M, Holyoke Valve & Hydrant, and the university held several meetings at the site. J&M subsequently submitted a proposal for an investigation, stating that:

Recently observed conditions indicate that an abnormal condition exists which appears to be causing corrosion failure, squirm, and liner damage to the existing expansion joints. Until the magnitude, source, and nature of the problem is determined, necessary corrective action cannot be taken. As a consequence, use of the Tillson Farm Boiler Plant as the main source of steam for the University is questionable with the utility tie line in its present condition. At the present time, with the data available, the cause of the problem cannot be traced to equipment malfunction, water source, water treatment, or outside contamination.²⁴

J&M's proposal provided for a laboratory analysis of material samples, as well as water and steam samples, and the replacement of joints and liners where damage had occurred. The BBC approved a sum not to exceed \$7,000 for J&M's fee on the condition that payment be withheld "until a determination is made as to liability for the corrective measures to be taken."²⁵

J&M estimated that this project would increase the contractor's work by \$30,000. The BBC, however, issued emergency change order #11 for only a portion of that amount, \$10,000. This work was given final approval as change order #21, for \$9,825.96, on October 19, 1976. This was the first of a series of changes initiated over the next several years, totaling \$96,492 in construction-contract costs alone, that did not solve the problem or even locate its source.*

In July of 1975, the BBC engaged the services of Charles T. Main of Boston to investigate the engineering problems at the Tillson Farm plant, for a fee not to exceed \$23,000.²⁶ Since the plant was not yet operating, four propane-gas space heaters were installed in December 1975 to prevent damage to the machinery from moisture and freezing.²⁷ Main's two-volume report, issued in April and May 1976, found several types of failures to the bellows expansion joints along the tie line. i.e.:

- 1.) collapse of the interior rubber sleeve, restricting the flow of steam through the line;
- 2.) distortion of the metal bellows joint, apparently caused by overstress in the material;
- 3.) corrosion of stainless-steel corrugated material in one joint.

Main found that a major cause of the failure was that the line had apparently been used to carry steam from the coal plant to Tillson Fram to heat the new plant during the latter stages of construction; the tie line was intended to carry steam only from the Tillson plant to the campus center, and was not designed to withstand pressures caused by steam carried in the opposite direction:

Failure of expansion joints occurred in various modes including collapse and crushing of the internal sleeves, failure of the bellows corrugations in permanent deformation, corrosion of the bellows, and several combinations of these modes.

*These change orders are as follows:

<u>Emergency C.O.#</u>	<u>C.O.#</u>	<u>Description</u>	<u>Final Costs</u>
..... (\$36,000)	18A-12	Replace steam and	
	19B-19	condensate lines.....	\$43,339.30
	20	Install certain drains	
		and vents, due to	
		excessive steam pouring	
		into roadway.....	14,396.85
#11 Not to Exceed (NTE 10,000)	21	Remove exp. joints for	
		investigation.....	9,825.96
	23	Remove insulation and	
		cover for investigation.....	3,142.38
#12 (NTE 15,000)	25	Labor and material for	
		investigation.....	2,270.03
	26	" " " ".....	8,938.70
#15 (NTE 23,000)	27	Necessary removal, re-	
		placement and testing of	
		valves, traps, joints, etc..	3,846.14
	28	" " " ".....	6,886.39
	32	" " " ".....	3,846.14
		TOTAL	\$96,491.89

We believe the expansion joint failures in the form of collapse and crushing of the internal sleeves was due to the introduction of steam from the end of the tie line opposite to that of the design flow direction.²⁸

This failure may also have been due to inadequate guides used to align the piping:

It is our opinion that failure of the bellows corrugations in permanent deformation was the result of inadequate guiding, and/or possible misalignment during construction.... It should be noted that the bellows units comply with the drawings and specifications; however, there was no allowance made for lateral or angular deflection in either the construction drawings, specifications or the shop drawings.²⁹

According to Main, the presence of impurities (chlorides) in the steam line that became trapped between the rubber sleeves and the metal bellows joint material had caused the corrosion of the corrugated metal joint. Main said that such impurities had probably come from city water used in the testing or start-up of the line.³⁰ In addition, Main found that the insulation in the line had become wet, causing excessive heat loss, as much as 45 to 95 percent greater than the calculated heat loss based on the soil conditions at the site. Not only did this waste fuel, but if the university wished to generate electricity using the steam, it would be necessary to run the steam through the pipe at a higher rate to produce an acceptable temperature at the generating turbines at the other end. (Below a certain temperature, steam will have excessive moisture and cause damage to the generating equipment.) Consequently, the rate of steam flow required for the operation of the turbines was much greater than the flow typically used during the off-peak heating season. If the university wished to operate the turbines efficiently, it would be necessary to solve the heat loss problem by drying or replacing insulation, shortening the tie line, or relocating the turbines closer to the plant.³¹

The Main report outlined six schemes for correcting the expansion-joint problem, ranging in estimated cost from \$1.15 million to \$6.36 million. Main did not recommend the two measures that called for re-use of existing undamaged joints because either scheme "simply reconstructs the original design and does not modify the conditions which led to the failure of the pipe line."³² The four preferred approaches -- involving the replacement of the expansion joints with improved materials, realignment of the piping, and installation of proper guiding devices -- ranged in cost from \$2.4 million to \$4.5 million if only one line was rehabilitated,³³ or from \$2.6 million to \$6.36 million if both parts of the line were to be rehabilitated. Main estimated that the cost of dismantling and re-erecting the Tillson plant at the center of campus to be \$6.6 million.³⁴

Renovation of Coal Plant

At this point, UMass/Amherst and the BBC faced a difficult decision: the choice between an outmoded facility that did not meet air pollution control standards and that had been scheduled to cease operation in 1974, and a new \$9.3 million facility that did not operate. Whichever facility the university decided to use, additional capital outlays would be necessary to continue producing heat. With the environmental protection division of the attorney general's office pressing for a solution, the university decided in May of 1977 to abandon the Tillson Farm plant and to proceed with repairs to make the coal plant meet environmental guidelines.

In a letter to the Committee on Buildings and Grounds of the Board of Trustees, UMass President Robert Wood stated that meetings between the university and the BBC in April 1977 had resulted in two schemes, both of which "involve initial investments very substantially below most of the solutions proposed by the consultants." One approach was to improve the coal plant; the other was to replace either all of, or just the damaged expansion joints in, the tie line. The dramatic increase in oil prices, however, made obsolete the original 1969 calculus used in choosing fuel types; Wood cited the figure of \$740,000 as a minimum annual savings from the continued use of coal. Enrollment projections as well as energy-consumption limits had also changed significantly. Wood stated that "with the intensive conservation measures initiated after the 1973 oil embargo, the steam requirements at the campus are now within the capacity of the original coal-fired plant." He therefore recommended that the new plant "be mothballed so as to prevent any further deterioration, and...could be reactivated in five years or more if technological and price changes make it feasible to do so."³⁵

On May 4, 1977 the board's Committee on Buildings and Grounds met at UMass/Boston to discuss the matter. The cost of the air pollution control work on the coal plant was estimated at \$1.3 to \$1.8 million, to be completed within 15 to 21 months. While committee members were generally in favor of using the coal plant, they also expressed concern that efforts be made to determine responsibility for the tie line's failure.³⁶ On the following day, planning officers of UMass met with BBC engineers who raised "very serious new concerns regarding apparent defects or deterioration in the tie line casings which have recently been under investigation by the designer..." problems that apparently resulted in "the failure of the conduits to maintain the air pressure...." Since the engineers' findings made the possibility of repairs to the tie line even more uncertain, the BBC "suspended all repair work on the tie lines until the cause of the failures has been identified." It then directed J&M to proceed with an investigation of the problem.³⁷

At its next meeting, on May 24, 1977, the Committee on Buildings and Grounds voted:

...to recommend that the Board of Trustees approve development of a program and design for renovations of the coal-fired boiler plant at UM/Amherst to meet fly ash emission standards.³⁸

In early May 1977, representatives of UMass, the BBC, the Department of Administration and Finance, and the attorney general's environmental division met to agree on a new schedule for compliance with the environmental quality standards.³⁹ In October 1977, a consent judgment was signed by all parties. The schedule set forth in the judgment called for the execution of a design contract not later than August 26, 1977; the submission of a capital outlay request for the necessary funds not later than October 1, 1977; the final approval of working plans and specifications within 36 weeks of the legislature's approval of funds; the award of a construction contract within 12 weeks of working plans approval; and the completion of work within 30 weeks of contract award.⁴⁰ The Reading, PA engineering firm of Gilbert/Commonwealth was engaged to perform emission testing, and to estimate costs of the possible approaches. This study was used for planning, budgeting and as background for designer selection.⁴¹ On June 29, 1977, the Designer Selection Board (DSB) selected three firms as finalists for BBC project UA76-2; on the following day, the Commissioner of Administration named Stone & Webster as the designer.⁴²

In 1976 the legislature had approved \$1.5 million "for the repair, improvement, and extension of utility systems, including power-plant adjustments;" a language change was now proposed, that would allow for the use of this money for renovations to the steam-generating plants and for air pollution prevention, providing for a total project cost not to exceed \$2.5 million. Although this language change was not approved, the legislature did appropriate \$2.1 million for renovation to the plant in January 1978.⁴³ Under the terms of the October 1977 consent judgment, this appropriation date meant that the approval of working plans and specifications should take place no later than November 1978; and the completion of construction no later than September 1979.

Before this appropriation was made, however, the BBC requested and received permission to expend up to \$20,000 from its planning funds in order to expedite planning.⁴⁴ Accordingly, Stone & Webster was directed on August 10, 1977, to proceed with preliminary plans ("Phase IA"), the architect's fee on this work was to be "applied as a credit against the total fee for the project."⁴⁵ In January 1978 Stone & Webster returned its executed copies of the contract, attaching a list of amendments and interpretations of the terms for BBC approval. The proposed conditions defined the extent of the designer's liability and specified the amount and type of insurance the contractors must carry. On

advice from the attorney general's office, the BBC was unwilling to accept the proposed terms⁴⁷ and contract negotiations ceased. "The parties cannot amicably agree to a contract and Stone & Webster having completed the air pollution study, does not wish to proceed further with the assignment."⁴⁸ The work performed by the designer totaled \$37,147.81, almost twice the amount authorized on August 8, 1977.⁴⁹ Although an executed contract did not exist, the fee was paid since the designer "was officially authorized and did in fact perform services for a consideration (also)...both parties concur with the work product produced."⁵⁰

The loss of Stone & Webster's services left the BBC "several months behind the schedule established in the consent decree signed by the Attorney General's office, Bureau of Building Construction, and the University..." Accordingly, George Kaludis of the UMass president's office requested that the Commissioner of Administration select one of the other DSB finalists selected in June 1977, stating that since the schedule

calls for the University's Amherst Campus to conform to air quality regulations or to cease operations of the campus, it is essential that the project not experience further delays by yet another designer selection process.⁵¹

On May 5, 1978 the Designer Selection Board named three finalists, two of whom had been on the previous list; on May 10, the Commissioner of Administration chose Syska & Hennessey, Inc. (S&H) of New York City, for the project.⁵² The estimated construction cost at this point was \$2.3 million.

Work was again delayed for several months because S&H requested an increase in the designer's fee to 10 percent, arguing that "the work involved must be classified as alteration or renovation type work of considerable complexity." On July 24, the BBC agreed to a fee of 9.56 percent,^{53a} and the contract was executed on September 8, 1978.^{53b}

In January 1980, Syska and Hennessy delivered a report on the Amherst energy-use options, titled "Economic and Feasibility Study of Energy Alternatives for Campus Operations." Their analysis considered the capital costs of operating maintaining and replacing equipment as well as the fuel costs for seven basic options. These options included the continued use of the coal plant (with necessary air pollution control measures), the construction of a new coal or oil plant, and several schemes for rehabilitation of the Tillson tie line. Each option met current state and Federal air quality standards. (S & H's construction costs were "order of magnitude" estimates "for comparison purposes only and should not be used for construction funding."⁵⁴) As Syska and Hennessy's table (see next page) indicates, coal was the least expensive option:

Option	1 Equipment Cost	2 Operating & Maintenance Cost	3 Fuel Cost (BASE)	4 Fuel Cost* @ ¢ 48.64	5 Fuel Cost* @ ¢ 48.64 Escal. @ 10%	1+2+3 Total Capitalized Cost w Oil Escal. @ 10%	1+2+4 Total Capitalized Cost w Oil Escal. @ ¢ 48.64	1+2+5 Total Capitalized Cost w Oil Escal. @ 10%
1. Existing coal plt. @ coal blr. replacement (Pg. 12)	9,952	33,400	80,295 (83,062)**	-	-	123,647 (126,414)**	-	-
2. Existing coal plt. @ oil bbr. replacement (Pg. 15)	6,541	28,180	97,088	119,996	210,845	131,809	154,707	245,566
3. New coal plt. (Pg. 18)	18,850	27,548	78,015	-	-	124,413	-	-
4. New oil plt. (Pg. 20)	10,350	19,248	97,065	122,794	210,250	126,663	152,392	239,848
5. Move Tillson (Pg. 22)	19,600	24,165	97,065	122,794	210,250	140,830	166,559	254,015
6. Use Tillson @ oil (Pg. 24)								
a. TWO TIE LINES, BELLOW JOINTS	9,900	21,192	106,682	138,187	236,337	137,774	169,279	267,429
b. TWO TIE LINES, SLIP JOINTS	10,400	21,293	106,682	138,187	236,337	138,375	169,880	268,360
c. TWO TIE LINES, LOOPS	12,500	20,461	106,682	138,187	236,337	139,643	171,148	269,298
d. ONE TIE LINE, LOOPS	7,500	19,953	104,730	135,075	231,015	132,183	162,528	258,468
7. a. Convert Tillson to coal (Pg. 27)	23,940	40,292	79,687	-	-	143,919	-	-
b. Convert Tillson to coal gasification (Pg. 29)	34,300	46,947	87,306	-	-	168,553	-	-
c. Coal/oil slurry, TILLSON (Pg. 31)								
d. Natural gas, TILLSON (Pg. 32)								

NOT FEASIBLE

NOT FEASIBLE

* Sensitivity of fuel oil price impact is evaluated in Appendix 1 and shown on this table.

** () Indicates capitalized costs associated with existing boiler being operated at March '79 condition.

NOTE: All numbers are in thousands of dollars.

Table 1 from Syska & Hennessy report, January, 1980

Our basic recommendation is that the University continue to utilize coal as their main energy source for the future. This can be done by either a phased rehabilitation of the existing coal fired heating plant or the construction of an entirely new coal fired heating plant. The implementation of either of the above approaches will require further detailed study relative to site location for a new heating plant, required equipment replacement in the existing plant, air pollution requirements for either scheme, etc.⁵⁵

Although the initial capital investment for coal equipment is larger than for a similar oil installation, differences in the cost of fuel make coal cheaper in the long run.⁵⁶ Indeed, the higher the price of oil, the more desirable was the use of coal. During the preparation of S & H's report, the cost of number 6 fuel oil for the plant increased from 37.5 to 48.6 cents per gallon.⁵⁷ Syska and Hennessy pointed out that a recent Act of Congress, the Power Plant and Industrial Fuel Use Act of 1978, directed new power plants "away from liquid and gaseous fuels and toward solid fuels."⁵⁸ Syska & Hennessy's chart also indicated that capital costs represent a relatively minor portion of the 30-year operating cycle of such projects. (Even for the recommended option, equipment represented 9%; operation and maintenance, 27%; and fuel, 65% of the total 30-year costs.)

Syska and Hennessy's recommended option (#1) called for the installation of air pollution control (APC) equipment in 1980; the replacement of four (20,000 lb/hr.) boilers in 1982; the replacement of the three remaining (80,000 lb/hr.) boilers in 1986, 1987 and 1988, and the installation of additional APC equipment in 1987 to meet the plants increased steam production⁵⁹ capacity. This option

presents the most economically and technically feasible alternative for the continuing utilization of energy at the Amherst Campus of the University of Massachusetts. It is anticipated that within the near future more emphasis will be placed on the technology of improved, high efficient burning of coal. A very attractive, additional advantage of Option No. 1 is that since the boilers are scheduled to be replaced over a number of years, the University can purchase future 'State of the Art' equipment, as it becomes feasible.⁶⁰

Syska and Hennessy estimated that the least costly option using the Tillson Plant was the rehabilitation of only one tie-line, requiring an initial investment of \$7.5 million (Option 6d.) Disassembling and moving the plant to the center of campus would cost more than twice as much, \$19.6 million (Option 5), not only because of labor costs, but also because of the additional wear on the equipment caused by such an operation and the need to install air pollution control equipment on any facility placed at the center of campus.⁶¹ Options 7a and 7b, conversion of Tillson to coal or to coal gasification were also considered, but were even more expensive, with initial investments of \$23.9 and \$34.3 million respectively.⁶² The use of an experimental coal-oil fuel mixture (Option 7c) was not recommended because the technique is still not fully developed, and natural gas (Option 7d) was also ruled out because of the uncertainty of supply.⁶³

Conclusions reached in the report eliminate any future use of the existing Tillson Farms oil-fired Heating Plant. This is basically due to the current and anticipated future higher cost of oil when compared to coal and the necessity of either replacing the one and three quarter mile long underground steam tie line or moving the entire plant closer to the existing coal fired plant and steam distribution center, either of which costs are economically prohibitive. Our recommendations and conclusions relative to the Tillson Farms Heating Plant and the tie line should not be construed as making a judgment relative to their engineering design or operation.⁶⁴

The scrap value of the Tillson Farm building and equipment, if not used in the option finally chosen by the university, was estimated to be \$500,000.⁶⁵

In September 1979, the deadline passed for completion of air pollution control measures. This put the university and the BBC in violation of the consent decree of October 1977. Consequently, in July 1980 an amended consent judgment was drawn up revising the schedule for compliance with air pollution regulations. This schedule called for advertising for bids on three major pieces of equipment by November 1, 1980, and delivery deadlines of:

January 15, 1982 - Draft fan system;

February 15, 1982 - Ash collecting system;

April 15, 1982 - Baghouse system;

In addition, the schedule called for the advertising for bids on the installation of the system by September 15, 1981 and the completion of construction of the system and start of operation by February 7, 1983.⁶⁶

On May 29, 1980 the project was divided into four contracts, as follows:

<u>Contract</u>	<u>Title</u>	<u>Estimated Const. Cost</u>	<u>Fee</u>	<u>Fee</u>
#1	Prepurchase induced draft fans	\$ 168,000.00	14.3%	\$ 24,024.00
2	Prepurchase baghouse/collector system	1,444,800.00	7.3%	105,470.40
3	Prepurchase ash collection system	367,500.00	9.3%	34,104.00
4	Improvements to coal-fired plant	<u>1,184,700.00</u>	<u>10.0%</u>	<u>118,470.00</u>
		\$3,165,000.00	8.9%	\$282,068.40

In two years, the total ECC had thus increased from \$2,300,000 to \$3,165,000.⁵⁴ Working plans for the three contracts for the prepurchase of equipment were approved in September 1980.⁶⁷ The BBC project schedule calls for bidding on the coal plant improvements in November 1981.⁶⁸

The "Mothballing" of the Tillson Plant

At a cost of about \$2,000, UMass Physical Plant engineers installed temporary space-heating systems in the Tillson Farm plant building in December 1975 to prevent damage from freezing and high humidity.⁶⁹ This measure has not been totally successful, however. Although President Wood had recommended in 1977 to the Committee on Buildings and Grounds that the plant and tie line "be mothballed

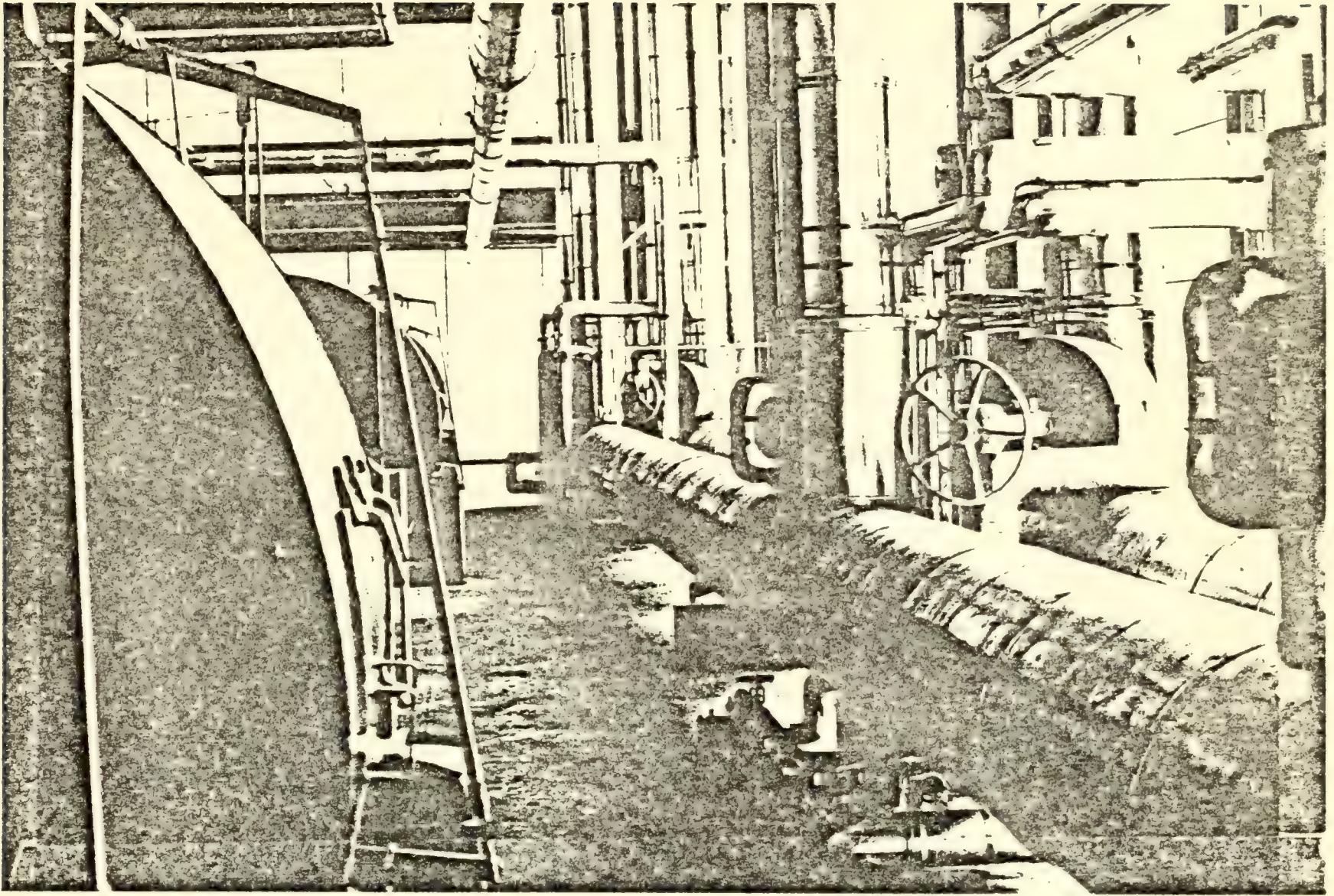


Photo: The Tillson Farm power plant, showing unused equipment.

so as to prevent any further deterioration,"⁷⁰ it is unclear what steps, if any, the university or the BBC took to do so. In its Fiscal 1979 audit of the BBC, the state auditor's office recommended that "the Bureau expend the necessary funds to properly de-activate or mothball this facility. It was noted during the visit that portable heaters are being used to maintain an above freezing temperature in the plant. Their failure during severe winter weather could cause serious damage. It also appears that many of the instruments, valves and piping have not been maintained but only turned off in 1975 and left to corrode and rust."⁷¹ The BBC has recently initiated a study to determine alternative uses of the Tillson plant. This project is currently before the designer selection board.⁷²

The attorney general's office filed a civil action against the designer of the power plant, Jackson & Moreland, seeking the recovery of \$7,000,000. The complaint filed cited breach of contract for errors and omissions in the design of the plant; breach of warranty for the design of the plant which was

"unsuitable, inadequate, and not usable for its intended uses;" negligence in the execution of the project; and for the representation that "steam could be introduced into and conveyed through the ... tie line in a so-called 'reverse flow' i.e., in a direction from the old power plant to the new Tillson Farm Power Plant⁷³ In October 1980, the Commonwealth received as settlement \$975,000.

Conclusion

The failure of the Tillson Farm power plant left the Bureau of Building Construction and the University of Massachusetts in an unenviable position. Every available option had serious drawbacks. The \$3 million pipeline was by all estimations totally useless, and its repair or reconstruction would cost far more than the original construction. This rendered the brand new \$6 million power plant unusable. Moreover, even if the pipeline could be rebuilt, the skyrocketing price of oil in the 1970s had made coal a far more attractive energy source. Had the Tillson plant and tie line functioned properly from the start, it is hard to say whether the University still would have decided to go with coal. However, faced with a choice between spending millions of dollars in order to use oil and spending millions to use coal, the university probably made the right choice in staying with coal. It is similarly hard to second-guess the original decision to build the Tillson plant. With the energy crisis undreamt-of in 1969, the university probably made the right choice in planning the new plant.⁷⁴ (Whether the plant had to be located so far away from the campus, with space available adjacent to the old plant, is another question.)⁷⁵ Yet the combination of the two choices has, tragically, left the university with an unused, \$10 million white elephant, and still-unfinished repairs to the coal plant it started with. As a result, improvements to air quality at the center of campus will not be effected until 1983, ten years later than the date Tillson Farm was supposed to have started operation, and \$10 million of the taxpayers' money will have been spent to no end.

Introduction

The Columbia Point campus of the University of Massachusetts-Boston constitutes the largest building project ever undertaken by the Commonwealth of Massachusetts. Comprised of 14 buildings located on a 90-acre site on Boston Harbor, the master plan details the number, size and physical relationships required to accommodate a total of 15,000 students. The estimated cost of the original 10-year plan was \$355 million. The legislative acts of 1969 approved Phase I, a 2-3/4 year crash design-construction program representing 40 percent of the planned development, with appropriations of \$150 million.

Executed by associated architects Pietro Belluschi and Sasaki, Dawson, DeMay Associates, Inc., of Watertown, the university's masterplan calls for six autonomous "colleges"--each with instructional facilities for 2,500 students--surrounding a central core containing the library, science center, student activity center and administration building. The open space thus created would be equivalent to the "yards" found in traditional campuses. Parking for 6,000 cars would be located in decks under the buildings, and all structures were to be interrelated with both vertical and horizontal circulation systems.

As an integral part of the building complex, a main utility system would distribute communications, electrical services, and heating and cooling services to individual mechanical and service areas.

A closed pedestrian system, located at the second floor level was designed to connect the main instructional floors of the "colleges," Science Center, Fine Arts Center and Physical Education building, providing an enclosed, weather-protected circulation path from building to building by means of elevated bridges.

Because of the size and complexity of the U/Mass Boston project, the Bureau of Building Construction called in the construction management firm McKee-Berger-Mansueto, Inc., of Boston and New York (MBM) to coordinate in design and construction. MBM's responsibilities were to provide the expertise to execute Phase I in an economical, expeditious and satisfactory manner using efficient construction cost planning and control programs, computerized management information and control systems, and schedule planning and control programs related to budgeting, purchasing, accounting and cost effective economic analysis.

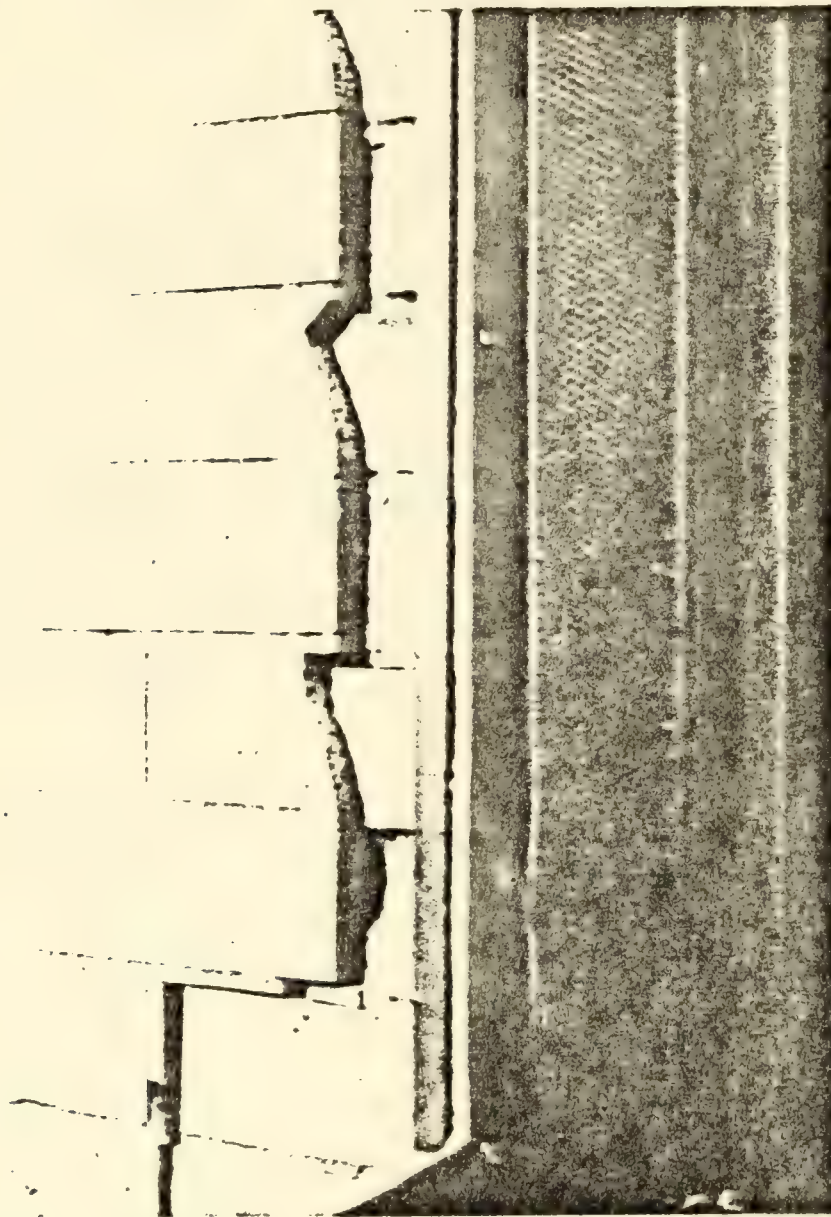
The construction process of the Columbia Point campus was unique in that the project was conceived as one entity but involved several concurrent building activities. It was the responsibility of MBM to coordinate the construction processes of separate structures, each designed by a different architectural firm.

The general structural system selected was steel frame and concrete slab,

with red brick exterior cladding as the visually unifying element. Several architectural firms were retained in order to avoid the monolithic sameness that characterizes many other large urban projects.

Six general contractors received awards for the eight basic elements of the Phase I program; these contracts are listed in the Table reproduced on the following page

The building program schedule was tight: designs that normally require 12 to 15 months to complete were scheduled for 6 to 9 months; construction that would normally take up to 4 years was scheduled for 2-1/2 years.



View Through Library Window; sheared
Brick Cladding at 10th Floor Level.

TABLE OF BACKGROUND INFORMATION
Questionnaire from
SPECIAL COMMISSION CONCERNING STATE & COUNTY BUILDINGS

Contract/Building	General Contractor	Contract Award Date	Contract Award Price	Final Contract Price 9/16/74	Designer	Gross Square Footage	Final Accept.	Beneficial Occupancy
U67-4/2-9 Monitoring & Signalization Syst.	Powers Regulator Co.	Feb. 1973	531,503.00	576,663.18	Charles T. Main, Inc.	N.A.	No F/A	Jan. 1974
U67 -4/2-11 Utility Bldg. 160 & Pumphouse 161	Blount-Fontaine	May 1971	2,553,350.00	2,564,375.61	" " "	65,200-Utility 5,270-Pumphse no parking	No F/A	Jan. 1974
U67-4/3 College Bldg. 010	Dimeo Construction Company	May 1971	19,516,812.56	19,886,300.12	Haldeman & Goransson Assoc. Inc.	287,770-Bldg. 182,472-Parking	No F/A	Jan. 1974
U67-4/4 College Bldg. 020	S. Volpe & Co. Inc.	May 1971	18,660,521.93	19,233,319.69	Cambridge Seven Assoc.	287,560-Bldg. 177,091-Parking	7/25/75	Jan. 1979
U67-4/5 Science Bldg. 080	Blount Fontaine	May 1971	21,300,653.38	22,179,832.68	Anderson Beckwith & Haible	296,716-Bldg. 155,216-Parking	No F/A	Jan. 1974
U67-4/6 Library Bldg. 090	Blount Fontaine	May 1971	21,812,658.17	22,689,912.13	Harry Weese & Associates	283,872-Bldg. 127,065-Parking	No F/A	Jan. 1974
U67-4/7 Administration	Franchi Construction Company	April 1971	4,938,000.16	5,020,344.99	Goody, Clancy & Assoc. Inc.	97,023-Bldg. 22,960-Parking	No F/A	July 1973
U67-4/8 Service & Supply	Poorvu Const. Co. Inc.	April 1971	3,354,685.34	3,460,805.75	Wallace, Floyd & Ellenzweig Inc.	86,488-Bldg. No Parking Area	No F/A	Oct. 1972

From the beginning, the U/Mass-Boston project was beset with numerous problems that taxed the talents and vision of its planners, designers, engineers and managers. Columbia Point is noted for its constant high winds, and it lies in the path of low-flying planes from nearby Logan Airport. Local fresh water supply is limited and the available water pressure is lower than that required to service such a large and demanding project. The most serious consideration, however, was that only about 14 acres of the site were originally exposed tidal marshland; the added acreage resulted from extensive dumping of refuse and burning of combustible rubbish over a period of about 40 years.

A garbage dump, offering relatively inexpensive land (\$1,750,000 for the nearly 90 acres), is poor support for construction. The existence of underground fires that had been burning for years added to the difficulty of clearing the dump materials: piles of solid rubble such as bricks and broken concrete slabs, broken battery casings, abandoned metal safes, glass bottles, abandoned and gutted automobile bodies, and household appliances such as refrigerators and kitchen ranges. Rodents infested the area and the potential existed for the presence of dangerous methane gas.

Haley and Aldrich, Inc. supervised a program of investigation and subsurface exploration, including bar probes, land and water drive sample borings, and test pits. From the results of the soil sample tests, it was determined that friction piles of 40 to 60 feet would be necessary to support most of the construction. Point bearing piles up to a maximum of 160 feet were also required in certain specific areas. This solution appears successful since regular monitoring of the completed structures reveals little or no settlement has occurred because of soil conditions.

Major Problem Areas

Construction began in the spring of 1971, and certificates of occupancy were awarded in time to open for classes in January 1974. Since that time, five major problem areas have surfaced that require special attention as well as significant past and future appropriations: the condenser sea water system; heating ventilating and airconditioning systems in college building (010); the roofing system of college building (010); the water proofing/caulking system of utility building (160) and at its interface with the library (090); and the brick cavity wall system of the library (090).¹

Condenser Sea Water Coolant System

Designed by Charles T. Main, Inc. in 1970-71 with subsequent construction by Flaherty-Sand Co., the university's cooling system makes use of four chiller condensers to cool the circulating fresh chilled water. In a clever bit of engineering, sea water was to be pumped in directly from Boston Harbor,

desalinated and filtered, run through the heat-exchange elements of the refrigeration units supplying the chilled water, and returned to the ocean. Early on, however, the refrigeration units showed signs of internal corrosion and the BBC engaged the Battelle Columbus Laboratories of Columbus, Ohio to investigate the problem. The subsequent 80-page report, submitted on January 31, 1975, stated that: "At the time of the start-up of the chiller condensers it was not fully appreciated that a break-in period, during which the flow of sea water through the plant is carefully controlled, is essential if optimum performance...is to be obtained...It is apparent from the corrosion behavior that some of the equipment, particularly the traveling screens, malfunctioned during the initial period of operation and allowed foreign matter to pass on to the condensers."

Some filter screens either were not yet installed or did not function properly during at least part of the the start-up period. To remedy the resulting corrosion, the Battelle Report recommended the following:

1. To correct deficiencies in the design of the sea water system: the addition of settlement pools and the introduction of chemicals to remove and inhibit the build-up of sediment and marine growth.
2. To further control marine life: the addition of screens and filters in the pumping station.
3. To facilitate flow of sea water: increasing the size and changing the composition of the piping.

In mid-1975 the BBC awarded Charles T. Main, Inc. a contract to run a new investigation of the corrosion problem. Their report dated March 1976 indicated that the existing large piping was repairable but that some smaller piping would have to be replaced. The Main report concluded that the existing damages due to corrosion were minor and that the estimated cost of repairs would be approximately \$125,000.

The Main report also provides the following summary of the general events that occurred during construction and operation of the condenser sea water system:

Substantial completion of part of the system was established by the Bureau on October 1, 1973, with the introduction of sea water into Chiller #1 for condensing purposes. Chiller #1 had been operating from July 13, 1973 on domestic water.

On August 1, 1973, the University of Massachusetts took over operation of Chiller #1.

On June 21, 1974, approximately one year after initial start-up on domestic water and eight months after operation on sea water, the condenser on Chiller #1 failed in the form of a corroded drain on the condenser water box.

Subsequently, Chillers #2, 3 and 4 failed from condenser head or tube failure on April 12, 1974, June 2, 1974, and July 4, 1974, respectively. A rather lengthy and in-depth investigation followed concluding with replacement of chiller water boxes, retubing of condensers for Chillers #3 and 4 and installation of cathodic protection in Chillers #1 and 2.

The above failures were investigated and reported on by Battelle Memorial Institute, Columbus, Ohio and Carroll Engineering, Inc., Ballardvale, Massachusetts for the Bureau of Building Construction and by A.W. Swanson, corrosion consultant for MAIN. These reports are a matter of record and will not be discussed herein except for reference.

On September 21, 1974, Chiller #2 had to be taken out of service because of a leak in the sea water piping system. A 6" by-pass developed pinholes at welds due to corrosion. The corrosion was attributed to loss of pipe internal coating caused by improper preparation of pipe and weld area prior to coating. Piping was repaired in house by welding by U/Mass. plant personnel and Chiller #2 was returned to service.

On June 1, 1975, a 14" dia. by-pass line between the 42" supply and return headers developed a leak in an elbow. The elbow was temporarily patched and subsequently the system was shut down on a weekend for more permanent repair with fiberglass.

During the shutdown internal inspection of the larger piping (36") by U/Mass. plant personnel revealed some loss of pipe coating with minor corrosion and a heavy build-up of sediment with live marine growth. Discovery of the marine growth and sediment combined with the apparent loss of pipe coating and the elbow failure caused considerable concern for the integrity of the entire sea water system. Thus this investigation and report was initiated. Chlorination of the sea water for condensing was not made operational until November, 1974. Numerous difficulties delayed the start-up, including debugging of the chlorination system, fouling of the sampling system, electrical problems, operating error causing loss of hypochlorite, delayed replacement of hypochlorite, and objections, later rescinded, by the chiller manufacturer to chlorination. Subsequently, the chlorination system has been plagued with failures of various components and has been operated only intermittently in both the automatic and manual modes. Following apparent satisfactory operation of the chlorination equipment it was discovered the equipment installed was basically fresh water equipment and gave erroneous readings when monitoring the chlorine content of sea water. Readings were off by as much as 1 ppm.

Chlorination thus has been less than satisfactory. [Emphasis added.]

The manufacturer of the equipment, Trane Corporation, now claims that it never intended to supply either data or equipment for use with sea water, that it was never informed of that need, nor was it capable at that time of rendering such services.

Willard Prince, Director of Facilities Planning and Development at U-Mass/Boston, wrote to the BBC on May 25, 1976 to challenge some of the assertions of the Main report and to suggest that the problem was indeed more serious than previously thought. His letter states the opinion that the location of the by-pass that returns unneeded sea water to the harbor is faulty, and that the chlorination system was put into operation late because it had not been completely installed. Prince also charged that operating and maintenance instructions were inadequate and misleading and that there was no designer supervision of the start-up process.

Finally, the BBC contracted with Francis Associates of Sippican Consultants International, Inc., to investigate alternative solutions that would prevent complete deterioration of the system. Submitted in early 1978, the report suggests the following three options:

Alternate I - Immediate and extended program to improve the existing system at a project cost of \$400,000 for the replacement of most piping and an extensive amount of the equipment with no hope of fully eliminating the problem of corrosion.

Alternate II - Interpose plate-type heat exchangers between the condensers and the pumping station to minimize the extent of contact between the sea water and the refrigeration units. The total cost of the new installations would be approximately \$2,100,000 (The annual operating cost was estimated at \$379,000.)

Alternate III - Install cooling towers to allow the use of fresh water only throughout the system, entirely eliminating the sea water. The annual operating costs would be higher because of the need for additional electrical power to operate the tower fans and for replacement water. Alternate III was estimated at a total installation cost of \$2,304,000 to \$2,910,000 depending on the location of the new cooling tower. The annual costs were estimated at \$386,000.

In 1978 the Legislature appropriated \$1,600,000 to rebuild the system using plate-type heat exchangers and fresh water for primary and secondary cooling in the refrigeration machine (Alternate II). The Commission's technical investigation indicates that the problem occurred because of improper design based on claims by the refrigeration machine manufacturer about satisfactory experience with condenser tubing under corrosive (sea water) conditions.

HVAC Systems: College Building (010)

Two serious problems that plague college building (010) continue to make it an uncomfortable environment for its users. The HVAC system fails to control humidity so that condensation occurs regularly on the first level rooms along the northeastern side of the building. As designed and installed, the ducting produces insufficient air flow, thus limiting the heating capacity of the units.

In 1977 the consulting firm of Helden Associates, Inc., Boston was hired to perform a survey of the building's 13 separate HVAC systems. The results of their investigations indicate that all 13 systems exhibit examples of the following deficiencies: :

1. Improper duct construction creates excessive drops in pressure in the supply air system.
2. Many fire dampers are missing and some are inaccessible.
3. Capacities of units are insufficient to heat, cool and ventilate the areas of the building they were designed to serve.
4. Units are improperly mounted and allow excessive vibration to be transmitted into the building structure.
5. There has occurred improper substitution of medium pressure units when job specifications and schedules on the "as-built" drawings call for high pressure units.

Faulty installation and workmanship, combined with questionable design procedures, have thus resulted in a failing system. Legislative appropriations totaling \$935,000 have allowed replacement or renovation of the duct distribution systems, additional fans and adjusted performance characteristics of existing fans. 2

Roofing: - College Building (010)

For more than six years, the leaking roof of college building 010 has created unsightly damage in the top-floor classrooms and meeting rooms; ceiling tiles fell out so repeatedly that they were no longer replaced. Investigation by Simpson Gumpertz & Heger, Inc. suggested the likelihood that the zonalite insulating fill under the built-up roofing was so completely water-soaked that the roofing membrane could not be properly anchored. The membrane is thus "highly susceptible to wind damage, including blow off of large portions at wind velocities which are normally expected in this area." It is presumed that improper installation techniques are to blame.

Heavy rains probably soaked the poured-in-place insulation just before the felts and gravel were applied; strong winds then lifted the felts, allowing further penetration of rain into the zonalite. The subsequent deterioration allowed water to seep freely into the roof covering, reaching (by several routes) the interior ceilings. The shoddiness of the ceiling is largely due to caved in ceiling panels as well as to the large plastic buckets suspended under the most vigorous leaks. Until the current repair process (under a \$200,000 contract) allows removal of the roofing elements, however, it will remain uncertain exactly why the roof failed so badly.

Waterproofing and Caulking: Utility Building (160) and Interface with Library (090)

In February 1975, the engineering firm of Thompson and Lichtner Co., Inc. conducted field investigations to determine the pattern of leaks occurring in the

roof of the utility building and along its interface with the library. At that time temporary measures were taken to minimize water infiltration and a program of caulking was begun. By mid-summer 1978 the problem became severe enough to warrant a second investigative contract. That July 1979 report of Schoenfeld Associates, Inc. to the BBC describes the extent of the problem:

"The Utility Building (number 160) roof level forms a courtyard and plaza as well as a vehicular turn-around to the Library Building (number 090) and the adjacent campus buildings. The main library is raised up on a series of pylons above the plaza level. The library support facilities are located below the plaza level and abut the levels of the utility building. A series of walks, planting beds, ramps and multi-level gravel beds form the transition from the main campus promenade level under the elevated library building to the plaza which is the roof of the utility building. This plaza is a prominent entry to the surrounding campus. The vehicular ramp along the west side of the plaza is surfaced with bituminous concrete. The vehicular and median surfaces are precast concrete and the perimeter sidewalks are constructed of cast-in-place concrete edged with granite curbs. Planting beds, benches and four large flag poles all contribute to the monumental appearance of the area.

The utility building itself is a multi-level structure housing the main boilers for the entire campus together with related mechanical and electrical equipment, offices and storage facilities. The central boiler room space extending vertically to the underside of the roof is surrounded by the support facilities on various levels. These support facilities abut the below grade portion of the library along what is designated the 'H' module line as shown in the utility building drawings.

The structural system of the utility building roof is composed of a reinforced concrete slab, integral reinforced beams and girders, and concrete columns most of which are readily accessible from the main level of the boiler room. A hatchway is located at the east side of the roof to allow for the removal of various equipment. The surface above the hatchway is paved over with precast paving blocks and the hatchway is not designed to be opened without first removing the blocks above."

The pattern of leaks as described in the Thompson & Lichtner Report and as confirmed by our field investigations is as follows:

Utility Building:

Leaks through roof generally scattered throughout the building and affecting all areas.

Heavy leakage around the hatchway at the east side of building roof.

Heavy leakage along the interface line of utility building and library building known as the 'H' line limited to the area underneath the pedestrian ramp.

Library Building Below Pedestrian Ramp

The building side of the interface 'H' line underneath the pedestrian ramp showed heavy leakage. The portion underneath the planting beds did not show signs of leakage.

In both the library and utility buildings sand bags, polyethylene protective coverings and related structures are being employed to control the leakage water and are evidence of the volume of water as well as the disruptive nature of the leakage condition to the intended uses of the spaces affected."

The report then raises several questions about the methods used to install the waterproofing membrane under the plaza area, which was also being used as a staging area for the construction of the adjacent library building. Although plywood was laid over the installed membrane, Schoenfeld Associates suggest that this measure was inadequate protection against damage caused by the movement of equipment or the weight of construction materials stocked upon it.

It was discovered, too, that the interface seam line was detailed differently on the two sets of working drawings: one set for the library called for a pre-molded joint filler/seal (neopreen gasket); the other, for the utility building, did not. If the sequence of construction were only slightly altered, the gasket--which must be in place before the concrete slab is poured--might have been dealt with as intended, but it appears that the omission was not noticed until it was too late to remedy.

Shoenfeld's report estimates that the cost of repairs, i.e., removal and replacement of significantly affected structural elements, will run as high as \$300,000.

Brick Cavity Wall: Library (090)

The tallest and most impressive of the campus buildings is the library, designed by the internationally known architectural firm of Harry Weese and Associates. Weese engaged Walter H. Pulsifer, Jr. and Associates to act as their on-site coordinators. The major portion of the library building is raised above the plaza level by masonry-covered steel columns extending as high as 40' on the west side. The steel frame and concrete (floor) slab structure has an enclosure system of cavity wall-type construction in which the outer face of brick rises parallel with, but at a distance of 1-1/2" from, the inner wall of concrete block. The cavity thus produced provides for water proofing as well as dead-space temperature control. It is a structural design technique of long practice and is common to most brick buildings.

To maintain accuracy in the parallel construction of the cavity wall, and to ensure the integrity of its structural capacity, it is necessary to "tie" the walls together using simple metal devices called brick ties or anchors. Usually the anchors are set into the inner wall while it is being erected, and they are allowed to extend far enough to be embedded securely into the mortar bed joints of the brick coursing. In this manner that space is kept even and the walls are encouraged to behave as one unit. It is standard procedure in the masonry trade to use anchors; this practice is written into the building codes and included in all Commonwealth specifications. The exact location of the anchors is generally left to the discretion of the master mason, but all specifications state how many brick ties should be engaged in a given square foot area.⁴

In 1975 the early signs of problems in the integrity of the cavity wall system became apparent. Exterior facing brick was cracking, spalling, and becoming dislocated or displaced. At first the damage was attributed to settlement of the large, heavy structure because of the poor soil conditions on the site. University personnel began a program of caulking the cracks as they appeared, especially in the higher floor levels, and the BBC launched an

investigation and monitoring program to determine the extent of settlement that had occurred and/or was occurring.

Although the results of the monitoring program indicated that no significant settlement had taken place and that the building was structurally sound, the spalling and dislocation of the face brick continued at an alarming rate. By 1979 the Commission's staff noted cracks in the surface of the brick up to 1" wide in some key locations, particularly at the upper (10th and 11th floor) corners; vertical splits also occurred along the edges of the building that pass in a straight line through at least four stories of brick coursing and shearing the brick as well as mortar.

Even after the BBC and the university conducted several investigations, the cause of the problem remains unknown. Steco Engineering Corporation performed preliminary tests that provided sufficient evidence of the need for further investigation, and \$250,000 has been appropriated to correct some immediately dangerous conditions. At present, barriers to pedestrian traffic are in place on the ground level around the periphery of the building to protect people from falling pieces of brick.

The university has itself supervised some so-called destructive testing on a limited scale, the results of which suggest the following explanations:

Use of a cavity wall enclosure system on a building of the size and height of the library is questionable in the first place;

The number of expansion joints which compensate for thermal expansion and contraction differentials seems inadequate for so broad a surface; and there is a significant shortage of brick ties; none, in fact, were found in approximately 30 square feet of the area inspected. This leads to the conclusion that for whatever reason (the tight schedule perhaps), supervision of the masonry subcontractors was negligent.

It is unlikely the problem in the library walls can be corrected without a major capital expenditure. The possibility exists that the entire cavity wall will need total restructuring.

UMASS WORCESTER

Introduction

The first legislative action on the University of Massachusetts Medical School occurred in 1962 when \$100,000 was appropriated for the preparation of plans, and another \$100,000 was set aside to hire a dean and other personnel to develop an educational program.¹ Three years later, the legislature approved an additional \$100,000 to continue work on the plans.² In 1965 \$1,750,000 was appropriated for, among other things, the purchase of land in the City of Worcester,³ a choice that seems to have been a compromise between those Trustees who favored Amherst, the site of the main University campus, and those who preferred Boston.⁴

The general plan for the Medical School called for a classroom building (the Basic Clinical and Sciences Building [BCSB]), a 400-bed teaching hospital, and a power plant to run the large complex. There were also various site work projects, as well as the need to allow for possible expansion of the school to include dormitories and other facilities. This project was the largest the Commonwealth had ever attempted, and one of the most complicated.

To meet this challenge, the Dean of the Medical School, Dr. Lamar Soutter, formed a committee to study and interview prospective designers. The committee consisted of trustees and members of the staff and had the advantage of consultants from outside the University, including Pietro Belluschi, the former Dean of the MIT School of Architecture. The committee recommended the Architects Collaborative of Cambridge, along with Ellerbee Associates of St. Paul, Minnesota as consultants. This recommendation was made to Commissioner of Administration John J. McCarthy, the official responsible for awarding of state design contracts, as well as to Governor John A. Volpe, in a meeting at the Hotel Somerset in Boston on October 26, 1965.⁵ University President John Lederle, Treasurer Kenneth Johnson and Soutter attended this meeting, and left with the impression that Volpe agreed with their recommendations. Specifically, Soutter later testified Volpe told McCarthy to "go ahead and appoint" the recommended firms.⁶ On January 12, 1966, however, McCarthy appointed the Boston firm of Campbell, Aldrich, and Nulty (CAN) for the BCSB (project U66-3 #1) and the power plant (U66-3 #4), and the Brookline firm of James Ritchie and Associates for the teaching hospital (U66-3 #2).⁷ Selection was formally completed on March 14, 1966.⁸ Ellerbee was added later as a consultant.⁹

Despite the fact that CAN was an alternative proposed by the Trustees, the selections caused an immediate uproar. The inevitable charges of favoritism (the Medical School review committee had not even considered Ritchie) led to a special Senate investigation of the selections and of the designer contract award process generally. During the public hearings, the Senate Committee, chaired by Senator

James A. Kelly, Jr. (D-Oxford), uncovered little hard evidence of favoritism or outright corruption, although Bureau of Building Construction (BBC) Director Horace Chase did testify that he conferred with the Governor's brother, S. Peter Volpe, before making his recommendations for designers on at least 46 projects. Chase testified that he did so at McCarthy's instructions.¹⁰ The Committee report criticized the behavior of the Governor, his brother, McCarthy and Chase, but Attorney General Brooke found no grounds for legal action.¹¹ One recommendation for reform led to the creation of the Designer Selection Board, (DSB), intended to provide independent recommendations to the Commissioner of Administration for designer contract awards. (See discussion in Volume 4.)

The Senate investigation brought the entire medical school project to a halt, and Ritchie did not enter into a contract with the Commonwealth until February 16, 1967.¹² Five days later, Chase wrote to Ritchie setting out the estimated costs of the projects: \$34.2 million for the school and power plant and \$26.4 million for the teaching hospital -- a total project cost of \$60.6 million.¹³

It should be noted that the Commission's investigation of the UMass Medical School project centered on construction of the teaching hospital. Although the projects overlap to some extent, the focus here is on this part of the project.

The Medical School attempted stay abreast of the project by forming a Building Decision Committee which included Dean Soutter, Associate Dean John Stockwell, and Physical Plant Director Leslie Greig. On May 1, 1967, members of the Building Decision Committee met with representatives of the BBC, Ritchie, and Ellerbe to work out a schedule for construction of the teaching hospital. Among other goals, the plan called for the preparation of bid documents by December 1968, award of the construction contract in March 1969, and completion of the hospital by August 1, 1971.¹⁴ The design team was completed in August 1967 when the BBC approved Ritchie's selection of Jackson and Moreland, now a division of United Engineers and Constructors (UE&C), as the engineering consultants for the project.¹⁵

In 1967 the legislature appropriated \$45 million for the planning, construction, furnishing, and other expenses at the Medical School. Expenditure of any of this money was originally contingent upon assurances that at least \$22.5 million in federal funds would be available for the project.¹⁶ This requirement was eliminated a year later, perhaps to allow the work to proceed while federal approval was sought.¹⁷ In any event, it seems clear that the appropriation was for the BCSB and Power Plant rather than the Teaching Hospital.

Work on the hospital lagged far behind the May 1967 schedule. A BBC cost estimate in January 1969 estimated the total project cost to have reached \$62,333,000, a far cry from the \$26,400,000 estimated two years earlier. As

Leslie Greig noted, either one estimate or the other was badly mistaken.¹⁸

As Ritchie and UE&C continued to prepare the plans and specifications, the BBC began its review process. There are two stages involved with preparation of plans and specifications: In the "B" stage, schematics and preliminary drawings are developed; in the "C" stage, they are refined until the documents are ready for bidding purposes (step "C-11"). The steps in the process are numbered as they are transmitted from one participant to another; for example, "B-4" calls for the designer to submit certain plans to the BBC, "B-5" is the point when the BBC sends those plans to the operating agency, and "B-6" follows when the agency returns the documents with corrections and revisions.¹⁹ The most important step is probably "C-9", when the BBC approves the plans and specifications to be used as the bidding documents. These documents determine how a building is to be constructed and the construction cost.²⁰

The "C" stage for the Teaching Hospital was reached in the spring of 1970. The BBC was determined to expedite this process as much as possible. An April 23, 1970 letter from Peter Moyes to Walter Flaherty, the BBC engineer in charge of reviewing the project plans, stated that BBC Director Walter Poitras had approved an abbreviated procedure. Specifically, the architect was allowed to utilize the earliest "C" stage drawings, with corrections, as the bid documents.²¹

Ritchie submitted the "C-9" drawings to the BBC on June 5, 1970, accompanied by a transmittal letter from Moyes to Poitras.²² Also on that date, the BBC sent Ritchie a letter instructing the firm to continue developing the project at an estimated construction cost (ECC) of \$43,318,635.²³ The BBC files also yielded another letter to Ritchie dated June 5, this one purporting to transmit approved copies of the "C-9" plans and specifications while authorizing continued development of the project at an ECC of \$42,400,000 -- nearly a million dollars lower than the first ECC! This letter was stamped "received" by Ritchie on November 17, 1970.²⁴ The plans and specifications used on the project are dated approved as of June 6, 1970.²⁵

The obvious inconsistency between the June 5, 1970 letter approving the "C-9" submittal and the June 6, 1970 approval stamped on the plans is explained by the fact that both were back-dated. This inference is reasonable based on the documents alone: there is no way the BBC could review the construction plans and specifications in one day, or send out two letters on the same day with estimates differing by almost a million dollars. And, of course, the Ritchie date-stamp of November 17, 1970 makes the June 5, 1970 letter with the lower ECC probably the one that was back-dated.

But there is more evidence. A BBC interoffice memo dated October 30, 1970

from Flaherty to his superior, Daniel Leite (with a copy to Poittrast) accompanied Flaherty's recommendation for approval of Ritchie's "C-9" submittal, and outlined the chaotic review that had taken place. Flaherty wrote that he was told that the "extremely high rate of escalating costs," reaching \$20,000 a day, led to the "unusual deviations" from standard review procedures. Flaherty maintained that his own examination had resulted in nearly \$1 million in cost reductions despite the "confused situation that this project was in when it was assigned to me in its final stages. The critical dates established to be met did not allow for reviewing these documents from an engineering viewpoint or with respect to the coordination of other buildings...in my opinion, this has been an almost impossible task establishing this project to a reasonable format and procedure for bidding purposes in the relatively short time in which I was assigned to the project." He then "reluctantly [recommends] that the plans be approved on a 'qualified' basis."²⁶ Flaherty in fact signed the approved documents "qualified."²⁷

This memorandum, in essence the staff recommendation to the Director, plainly came after the June 6, 1970 date stamped on the plans themselves. Further, the cost reductions are reflected in the June 5 letter stamped "received" on November 17, and must have followed Flaherty's review. In fact, Robert Allard of the BBC wrote to Ritchie on November 17, 1970, rescinding the June 5 letter that set an ECC of \$43,318,635, and replacing it with the lower figure.²⁸ Finally, Moyes wrote to Poittrast on December 2, 1971 stating, among other things, "with regard to the dating of the plans and specifications, we understand that we are to use the June 6, 1970 date."²⁹ It is then clear that certain documents including the contract plans themselves were back-dated, and that this occurred by design rather than error.

In 1970, the legislature also passed the main Teaching Hospital appropriation. Chapter 633 set aside \$53.2 million for construction of the Hospital, as well as the costs of furnishings and equipment. As with the School portion of the project, expenditure of any of this money was contingent on assurances of federal funding of not less than \$16,547,000.³⁰

Unlike the School portion of the project, where the federal funding requirement was eliminated, a far more difficult problem arose for the Teaching Hospital. According to Dean Soutter, federal officials rejected Ritchie's submission as "too fancy," and insisted that redesign take place before they would issue the necessary approval. By the time the second design was finished and the new plans were ready, however, the Nixon Administration had deleted hospital aid funds from the federal budget.³¹ This failure to obtain federal funding and the legislated prohibition against spending state money without it is

the most likely reason why bidding on the project was delayed from November 1970 until December 1971. When it became clear that federal approval was not forthcoming, the legislature again deleted the stipulation, and took out any references to using the appropriation for furnishings and equipment as well.³² The University planned to apply for the lost federal funds retroactively, but there is no indication that they were successful. Consequently, the Commonwealth spent \$16 million that it fully intended the federal government to provide.

Elimination of the federal funding requirement was apparently the last hurdle to clear before the project went out to bid. The plans and specifications were made available to general contractors and subcontractors in December 1971, and bids were opened by the BBC in February, 1972. In the interim, however, interested bidders as always raised questions concerning the bid documents. The replies, issued as addenda, became part of the contract documents, superseding the unclear or erroneous earlier portion. One prospective sub-bidder or supplier, Park L. Davis Co., raised a question concerning the ductwork specifications, i.e., specifications for that part of the mechanical system responsible for delivering air throughout the building. Although it is uncertain what Davis' question was, it was referred to in a transmittal letter to UE&C from Ritchie's Gerald Pike dated January 7, 1972.³³ In an addendum issued on January 14, 1972 (Addendum No. 1), there is a reference to the ductwork specification: the issue concerned the "pressure" of the ductwork system called for in the plans and specifications. This is important because there are three different "pressures" for a ductwork system (low, medium, and high), and each has characteristics suitable only under certain conditions. For example, low pressure ductwork handles less air at lower velocities than medium pressure ductwork; and medium pressure ductwork, in turn, handles less air and lower velocities than high pressure. Should the wrong system be used, excessive vibration, leakage, or bursting might occur in any part or throughout the system. Equally important, at least to the bidders, is that there is a cost differential between systems, and bidding a more expensive system will be a disadvantage under the Commonwealth's filed sub-bid procedure.

The problem that Davis may have caught is that the specifications seemed to call for a low pressure system while the drawings pointed to a medium or low pressure system. As the definitive resolution of any conflict, the addendum stated that "All ductwork serving Level B* air handling units shall be classified as low pressure ductwork."³⁴ Although this seems to be a clear statement, at least one sub-bidder realized an inconsistency still existed and bid the system as one requiring at least a substantial amount of medium pressure ductwork. Needless to say, this firm was not the low bidder.³⁵ The lowest bidder for the

heating, ventilating, and air conditioning (HVAC) work was the Syracuse, New York firm of H.H. and F.E. Bean, Co. with a bid of \$4,694,674. Bean was accepted as the "lowest responsible bidder" and got the HVAC contract. The general contract went to Vappi and Co. of Cambridge, at an adjusted low bid of \$44,201,927.³⁶

One of the first tasks of the successful subcontractor is to prepare "coordination drawings". These drawings show more precisely what work is called for in a particular trade, and take into account the other sub-contractors' responsibilities. In preparing the HVAC drawings, Bean ran into trouble almost immediately. In a letter to Vappi dated July 7, 1972, Bean's Vice President Joel Camino stated that, while Addendum No. 1 called for a low-pressure system in the lower four floors of the hospital, "when actual engineering calculations were taken on the distribution ducts, it became apparent that the pressures and velocities are far in excess of the SMACCA [Sheet Metal Air Conditioning Contractors Association] low pressure standards and in reality on the border line between medium and high pressure standards." Camino wrote that a complete engineering redesign was therefore necessary, and that the extra cost involved "could very easily amount to several hundreds of thousands of dollars," as well as delay construction generally.³⁷

The fact of this large-scale error, and the subsequent need for a complete engineering redesign, was apparently unquestioned. Accordingly, UE&C was put to work accomplishing it. Rather than hold off on each drawing until the entire system was perfected, each section (divided by a North and South unit) was sent to the architect for transmittal to the contractors upon completion.³⁸ In order to avoid delays, this section-by-section approach continued in the actual construction work -- even though the cost of the change from low to medium pressure ductwork had not been decided.

Whenever a change is required in the contract documents during construction, a "change order" must be processed. The BBC, the operating agency (i.e., the Medical School), the architect, or the contractor (representing, as necessary, his subcontractors) may initiate a change order. The architect prepares a "Clarification Memo" covering the change, and submits it to the contractor for a price proposal or "quotation"; if the quotation is rejected, additional negotiation follows. Once the quotation is accepted, the general contractor, clerk of the works, architect, and BBC personnel process the actual change order document, verifying that the work has been done and listing the price. It is a cumbersome and less than thorough procedure; of the three BBC signatures required,

*Level "B" air handling units served the lower four levels: B, A, 1 and 2.

the final two reviewers are mainly concerned that the basic documentation exists, rather than that the change is cost-efficient.³⁹

In the case of the ductwork change orders, the process included one additional element. Since it was clear that the cost would be substantial and that several change orders would be required, a standard price was set for changing from a low pressure to medium pressure duct. The unit used would be a "per pound" measurement, by which the number of pounds needed could be multiplied to get the dollar amount. The cost per pound was to include materials and installation.

The first mention the Commission found of a per-pound figure was in an October 11, 1972 memorandum to file by John H. Fullerton, UE&C's engineering manager, who noted that Bean submitted a price quotation of \$3.25 per pound on the first clarification memos relating to the ductwork change. Fullerton wrote that Bean considered the price "fair."⁴⁰ It was then UE&C's job to check the reasonableness of this offer and to recommend acceptance or rejection to their client, the architect.

In a letter dated October 20, 1972 to Ritchie Vice-President Roland W. Martineau, Fullerton stated that UE&C "would normally expect to see a price in the neighborhood of \$2.25 per pound for medium pressure ductwork." He added that, in light of a further review, he told the contractor that UE&C would recommend approval at \$2.50 per pound, at which time the contractor reduced his quotation from \$3.25 to \$3.00 per pound (\$1.05 for material and \$1.95 for labor to make the installation). Fullerton concluded that UE&C "continue[s] to hold the view that \$2.50 for material and labor is appropriate," and noted that Martineau indicated that Ritchie would do some investigation of this matter on their own.⁴¹

Fullerton wrote another memorandum to the files on October 25, 1972, indicating that BBC Chief Project Engineer Eugene Malloy had approved Bean's price submittals for the material only on the first two clarification memos (H-62A and H-67). It was Malloy's intention to set a total per pound price only after the labor factor could be studied, following actual installation of some ductwork. Malloy approved H-62A at \$88,039 (including the general contractor's 5 percent mark-up) and H-67 at \$91,008. These quotations were approved excluding certain requested additional costs, such as the cost of drawing and direct project and non-working supervision. Malloy rejected the extra costs, Fullerton wrote, because they are "unjustified." The final material price was what Bean had last asked for, i.e., \$1.05 per pound. Fullerton then noted that Ritchie did indeed conduct their own investigation, however belatedly, and that Martineau had also found prices far lower than those Bean sought. Ritchie's mechanical

supervisor, Dave Miller, reported that two of his sources estimated a total cost of \$2.00 per pound, one cited \$2.25, and another \$2.35 per pound. Miller "independently concluded that \$2.50 per pound would be a good compromise for...the Worcester job."⁴²

The final resolution of this question came at a November 1, 1972 "special job meeting" in the BBC office at the work site. In attendance were representatives of the BBC, UE&C, Vappi, Bean, and a clerk of the works. After noting that the material quotations for H-62A and H-67 had received tentative approval (though without the drawing, direct project, or non-working supervision costs), Vappi's memorandum of the meeting stated:

After considerable discussion it was determined by all parties concerned that a solution based on a furnished and installed unit price of \$3.00 per lb. for medium pressure ductwork was agreeable. This \$3.00 per lb. unit price would also include Bean Company's direct project non-working supervision and drawing costs. The combined quotations would be made up of units totalling \$3.00 per lb. for furnishing and installing [sic] medium pressure ductwork...the possibility of verifying this unit by a time and material method [as Malloy has earlier planned] was mutually discarded.⁴³

The total cost for the first change orders was \$185,622 for H62-A (Level A) and \$192,230 for H-67 (Level B). These change orders received final approval on April 11, 1973.⁴⁴

The changes relating to the material and labor of the ductwork were not the only extra costs incurred because of the design error. Other trades were affected and of course submitted their bills. Nonetheless, the duct work accounted for the largest single part of the change, with the cost and number of pounds of medium pressure ductwork installed as follows:

<u>Level</u>	<u>Section</u>	<u># of Pounds</u>	<u>Cost</u>
B		39160	\$ 88,244 (material) ⁴⁵ \$ 97,378 (labor) ⁴⁶
A		40666	\$ 91,007 (material) ⁴⁷ \$101,123 (labor) ⁴⁸
1	North	16820	\$ 73,008 ⁴⁹
	South	11928	\$147,605 ⁵⁰
2	North	61966	\$170,760 ⁵¹
	South	44580	\$211,493 ⁵²

The total changes amount to \$980,618, covering 215,120 pounds of medium pressure ductwork. This is the net cost to the Commonwealth; the credit (for the low pressure duct not installed) is already included. The emphasis on the price per pound is now perhaps clearer: excluding even the lowest quoted prices, had the "compromise" figure of \$2.50 per pound that Fullerton suggested been accepted, a savings of more than \$100,000 would have resulted on these changes alone. Nor can it fairly be said that this \$3.00 figure was proper because Bean

included their drawing and non-working supervision costs; since Malloy rejected these attempted charges as "unjustified" on October 24, they had no place in the final settlement. Certainly the net cost increase -- excluding any re-evaluation of the credits offered, which, at fully 50 percent less than the medium pressure ductwork seems out of line with the medium pressure price according to the Means Standard Construction Guide and UE&C's investigations -- was substantial. The inability of the Commonwealth to secure the \$2.50 per pound price, itself inflated as a "compromise," is perhaps more lamentable.

In a November 29, 1972 letter to Peter Moyes, UE&C Vice President Fred Lindquist explained the reasons for the change from low to medium pressure. Referring to the design error, Lindquist stated that the early detection of the problem allowed the redesign to progress so as not to hold up the job: "...the revisions were made on a floor-by-floor basis consistent with the contractor's fabrication schedule."⁵³

The duct error was brought to the attention of the public in a November 29, 1972 article in the Boston Herald-Traveler/Record American, in which Moyes referred to the "honest mistake" of the engineers but was unable to estimate the total cost of the correction. The article referred to a cost of over \$1 million, and this must have come to the attention of public officials.⁵⁴ This \$1,000,000 estimate was confirmed at a BBC meeting in April 1973, and then doubled to \$2 million in June 1974.⁵⁵ It was also determined that the total change order bill might reach \$4,000,000.⁵⁶

About this time budgetary problems began to occur. In June 1974 BBC Director Poitras requested an additional \$500,000 for "unanticipated contingencies" at the project, a request that was granted a month later.⁵⁷ Also in July, the legislature added the words "including the partial costs of furnishings and equipment"* to the original teaching hospital legislation, and set aside \$3.5 million for the purpose. Although Governor Sargent vetoed the appropriation, the House and Senate overrode the veto.⁵⁸ Together with the extra \$500,000, the \$3.5 million was the first amount added to the main appropriation of \$53,230,000.

*Chapter 1180 of the Acts of 1973 restored the words "including the cost of furnishings and equipment" to the original legislation. This, then, was a revision of that chapter.

The added construction costs, due in large part to the ductwork error, began to attract attention on Beacon Hill. In December 1974, Poitras wrote to the Attorney General's office formally requesting that the Contracts Division examine the teaching hospital design error "with an eye" toward litigation.⁵⁹ A summary of the problems followed shortly,⁶⁰ and in July 1975, the Commonwealth filed \$3 million suit against Ritchie Associates for alleged design deficiencies.⁶¹ In September 1975, Ritchie filed a third-party suit against UE&C to recover all or part of any damages the Commonwealth might receive.⁶² These actions have not yet been resolved. The Governor's Council also noticed the cost overruns and conducted its own hearings. The Council subsequently withheld hundreds of thousands of dollars from Vappi for some few months, and placed a far more extended hold on payments to Ritchie.⁶³

As the teaching hospital work continued, the BCSB project was winding down. The BBC prepared to execute a Certificate of Substantial Completion in July 1974, but the Medical School refused to approve. In an August 6, 1974 letter to University President Robert Wood, Dean Soutter listed several areas where work remained unfinished and expressed concern that it might never be completed. One unacceptable condition was the excessive noise created by the HVAC system.⁶⁴ Evidence of the HVAC problem was noted in an April 10, 1975, memorandum from Professor Guido Majno, M.D., to Acting Dean R.W. Butcher:

Guido Hujko, M. D.

April 10, 1975

R. W. Butcher, Ph. D., Acting Dean

Dear Dean Butcher:

This letter is an experiment.

I would like to find out, in the name of this Department, whether the construction of State buildings is under the rule of the law, competence, and common sense, or whether it is outside these ordinary constraints.

We have occupied this building for 18 months. At that time the level of noise due to the air-conditioning system was such that classes could not be held; on the first day, faced with a class that could not hear me, I made such a fuss that our own Physical Plant staff came and made some make-shift repairs, although it was not their job to do so.

The end of our corridor, near the room where we hold our Departmental meetings (P2-14), sounds like an airport. In my own laboratory (P2-26), there is a loud hum on two notes, such that sometimes even the microscope vibrates and the image shakes; if I tried to photograph under such conditions, you can imagine the result. Besides, the noise in itself makes work unpleasant and tiresome. The same is true of other rooms in this Department - and elsewhere too, I am told.

Letters of complaint from myself and from other members of this faculty have been forwarded by Dean Scutter to the appropriate State authorities; absolutely no corrective measures have been taken. Apparently the competent individuals, if faced, they deserve this name, are not even courteous enough to advise us as to any action that might be anticipated. To make matters worse, I understand from Mr. Craig that the BSC intends to call the contract "completed" as of May 1, 1975. Anyone who could call this contract complete should be condemned to work with in perpetuity with the noise that we have to bear.

In our own field, Medicine, if a professional mistake is made, or if a patient is allowed to go with the treatment incomplete, we all know what happens. Here, the architect left, the builders are out, and nobody seems to care about the building that they have put together. Should not the architects like to know how the people live inside their building, once they have put it up? Or do they prefer to go on and make the same mistakes elsewhere? And the contractors too?

Such lack of interest and even courtesy - as a manifestation of professional pride - is absolutely astounding to me. In ordinary business, someone would be fired for a failure of this kind.

In any event, and please forgive me for the strong wording, I am no longer willing to be patient about the noise in my Department; and after you will have forwarded my letter to the competent individuals, I will expect some constructive measures, not just

Thank you for your help in this matter.

cc: L. M. Craig ✓

Robert W. Butcher
Department of Pathology

In a January 6, 1978 letter BBC Chief Supervisory Engineer, John Welch, informed the Medical School that the BBC would issue the teaching hospital project a "Certificate of Final Inspection, Release, and Acceptance" within two weeks.⁶⁶ In a January 23, 1978 letter, the Medical School Dean, Roger Bulger, asked that the BBC "reconsider" any decision to certify the teaching hospital as complete. Bulger listed specific portions of the work that were unfinished, and stated that "unless corrective action is taken...a recommendation will be presented to the Board of Trustees that the building not be accepted for final completion...Our concern is most justified in view of the history of the Basic and Clinical Sciences building contract."⁶⁷ The letter was too late: Poitras had signed the required certificate on January 19, 1978.⁶⁸ The Medical School nevertheless refused to approve the building as complete, and continues to do so. This action is more than merely symbolic; nearly \$1 million of HEW funds due the Commonwealth awaits the University's acceptance of the work. It is uncertain how long HEW will be patient, and the Medical School has already received at least one extension.⁶⁹

The Trustees may soon agree to accept the building, however. Physical Plant Director Raymond L. Quinlan told Commission staff that he is prepared to recommend acceptance to the Board of Trustees if a current project (U66-3 #11) is successfully completed.⁷⁰ This work, at an award price of \$413,000 (exclusive of design fees), is listed as "Upgrading Certain Facilities" at the Medical

School.⁷¹ In both Quinlan's and his staff's opinions, though, the work is primarily remedial and should have been done under the original plans and specifications.⁷²

The main purpose of U66-3 #11 is to provide the Medical School with a functioning Supervisory Data System (SDS), which is designed to coordinate the HVAC and related systems in the BCSB and teaching hospital for energy efficiency. For example, the system could be programmed to shut down a particular area automatically at a predetermined time when occupancy ceases. The SDS was intended to act as one system for the entire complex; as it is, however, it is entirely useless.⁷³

It was clear that the Supervisory Data System would present problems in specification writing because it was likely that one system might be bid and installed in the BCSB and a different one in the teaching hospital. Representatives of the BBC, Medical School, UE&C, and Francis Associates (engineering consultants for the BCSB) met several times to resolve the difficulties. Their recommendations called for deleting certain portions of the BCSB specification and inserting them in the teaching hospital project; this was not acceptable to CAN, and since the BCSB's architect refused to accept these changes, they were not implemented.⁷⁴ As a result, the teaching hospital specifications included the following catch-all requirement:

If the Control Subcontractor (for the Teaching Hospital) cannot mate his system with the automatic control systems in the Medical Science Building and Power Plant, he shall furnish all required equipment to make his system work including, but not limited to, new sensors, trunk cable, field and terminals cabinets, decoding, relays, etc.⁷⁵

The anticipated coordination problems nevertheless developed. One apparent deficiency was the lack of decoder relays that seemingly were explicitly required in the teaching hospital specification. In a July 25, 1974 letter, however, Leigh Smith of Nelson W. Aldrich and Associates (successor firm to CAN) wrote: "At the meeting on Feb. 27, 1974 with Mr. Ralph Nee (of the BBC), it was jointly agreed upon that the required decoder relays were not specified as part of either the School contract or Hospital contract."⁷⁶

The SDS, as "installed," did not function. The BBC decided to fund a separate contract to make the system operational. On September 18, 1977, the firm of Aldrich Pounder and Associates, successor to Nelson W. Aldrich and Associates, proposed to develop specifications to complete the SDS system. In his letter to BBC director Poitras, Maxwell Pounder stated:

As per your request, the following additional (emphasis added) work for the Medical School is updated as follows:

1. Completion of SDS System:

The SDS system serving the medical School and the Hospital were competitively bid and supplied by different manufacturers. Since these two systems are not compatible with each other it is impossible to interface them without additional work. Our outline specification proposes to install equipment and wiring necessary to permit the Johnson Console in the hospital to communicate with the existing Powers system installed in the Medical School. Estimated cost \$176,000.00.⁷⁷

The total work proposed would cost \$310,000, exclusive of a suggested 13 percent design fee. Pounder concluded:

Because of current administrative procedures the best way to maintain staff continuity of the overall coordinating Architects for the Medical Center Project, and simplify contractual agreements, is to award the design work for the above work to Aldrich Pounder and Associates, Inc. Development of these previous proposals has been based on that administrative procedure.⁷⁸

CAN had resisted changes to allow efficient "interfacing" as early as 1971. Now the successor firm stood to profit, and Aldrich Pounder in fact received the design work for U66-3 #11! Bids for the 365-day contract were opened July 20, 1979. The successful low bidder was Worcester Electrical Associates, Inc., at a price of \$413,000. The "interfacing" portion of the work, titled "Central Control Contract" accounted for \$259,000 of that total.⁷⁹ Eighteen months after the bids were opened, the job is not yet finished.⁸⁰

A good deal of confusion surrounds exactly what happened. In interviews with Commission staff, representatives of Ritchie and UE&C suggested that the BCSB portion of the SDS Contract was never completed and that the teaching hospital's coordination with a non-functioning system was thus impossible. Robert Scott of Ritchie said it would not only have been "unfair" to require Johnson Controls to mate with the Powers System but also legally questionable.⁸¹ Robert Terhune of UE&C also stated that they were told to "stay away" from the BCSB because of the legal ramifications.⁸² Following correspondence and discussion, the BBC seemed to "drop" the matter entirely.⁸³ It seems that only after this contract and other equipment matters are settled will be Commonwealth receive what was expected to cost \$53,230,000 in 1970.

Conclusions

It is difficult to determine precisely what the Teaching Hospital project has cost thus far, partly because of continuing equipment appropriations and other on-going work and partly because certain site contracts cannot be charged entirely to the BCSB or to the Teaching Hospital. As of July 1979, however, \$48,692,045.48 had been spent on construction alone, \$3,187,559.08 on designer's and consultant's fees, \$7,391,697.52 for furnishings and equipment, and \$854,093.89 for "miscellaneous activity", including costs of the clerks of the works, clerical assistance, and testing services. This total, exclusive of site work, is \$60,125,395.97.⁸⁴ Although it is difficult to say how much inflation

contributed to these expenditures, the total project cost is nonetheless more than double the \$26,400,000 appropriated in 1967.⁸⁵

The Teaching Hospital was a unique and ambitious project and perhaps must be evaluated in that light. Still, the major problems occurred from the very beginning.

The architect selection process caused a state-wide controversy, reaching to the Governor's family; the design was wrong and cost the Commonwealth its federal funds. Construction overruns, including the duct errors, totaled over \$4,500,000, more than 10 percent of the award price; unanticipated additional appropriations for furnishings and equipment were also necessary. Crucial specification sections, known to be problematic, were not complied with and have resulted in a building that, nearly 15 years after the architect was selected, the Medical School still does not consider complete.

There is no contention that this complex, as it stands, is anything other than a well-functioning university medical school. But, as Joseph Glynn of the BBC commented, when he told the Governor's council that "this project had the most extra change orders I've seen on any project," the Teaching Hospital was a disaster in terms of cost effectiveness: "it's a bad, bad job."⁸⁶

Introduction

The construction history of Pondville Hospital in Walpole, Massachusetts, strikingly illustrates the lack of effective capital planning in the Commonwealth. Completed in December 1972, the \$7,256,686 facility¹ has remained so underused that Governor King introduced a bill into the state legislature on September 25, 1979 to allow sale of the hospital.² The legislature passed the bill the following spring.³

The hospital's history also includes several instances in which the Bureau of Building Construction (BBC) and the Department of Public Health (DPH) accepted unusable equipment and faulty subsystems. Most of that equipment, such as an \$80,000 x-ray machine, is still out of service.

Planning and Usage Patterns

During the second Volpe administration, then Commissioner of Public Health Alfred L. Frechette suggested to the governor that a study be made to determine the future of Pondville Hospital. The existing building, a deteriorating wooden structure, would soon have to close. Originally built to treat soldiers injured in World War I, the hospital served exclusively as a cancer treatment center. The state legislature had assigned it that role in 1926 when cancer patients had difficulty gaining admittance to general hospitals.⁴ The type of facility needed to replace it, if any, was thus not immediately clear.

Volpe accepted Frechette's suggestion, and the Executive Office of Administration and Finance awarded the contract for the study to the Ritchie Organization. News of the study immediately generated a heated controversy involving legislators, Pondville employees, and the general public. Any possibility of the hospital's closing drew strong opposition. Ritchie concluded its study with the recommendation that a new cancer treatment facility be built on the site.⁵

Ritchie later received the contract for the design of the new building and, on August 29, 1969, the BBC awarded the construction contract to the Park Construction Company.⁶ Construction then proceeded slowly, reaching substantial completion a full 16 months later than the two-year period allowed in the contracts.⁷ When the building finally opened in December 1972, it provided the Commonwealth with new bed space for 104 patients and new outpatient facilities capable of treating 41,600 patients a year.⁸

The new Pondville Hospitals building has never operated at greater than

75 percent of its capacity. In September 1979 the inpatient census totaled 35, and had been steadily declining. Outpatient use at the time averaged only 60 percent of the hospital's capacity.⁹ As may be expected, costs per patient have been inordinately high. Between 1974 and 1978, as the patient population decreased, gross weekly per capita costs soared 95 percent, from \$883.74 to \$1,726.20;¹⁰ board charges alone rose from \$91.01 per day in February 1974 to \$204.64 per day in March 1977.¹¹ The hospital's gross annual costs rose by only 36 percent during this time.¹²

The \$1726.20 per week per capita figure compares very unfavorably with costs at other hospitals.* For example, the gross weekly per capita costs at Lakeville Hospital, a chronic disease facility having approximately the same bed capacity as Pondville, averaged \$924.73 in 1978.¹³ Even the costs at Lemuel Shattuck Hospital, in 1973, were only \$1,210.34.¹⁴ Like Pondville, Lemuel Shattuck specializes in acute care, but has a plant several times larger: as a state hospital it also treats patients other facilities will not ordinarily take, such as prisoners and mentally ill. Shattuck also has been somewhat underutilized.¹⁵

The cost to Pondville's patients of the hospital's under utilization are not merely financial. Dr. William Kaiser, the hospital's Chief of Surgery, told the State House Reporter in 1979 that over the previous decade the hospital had experienced "an exodus of talented medical staff," and that "If the downward spiral continues we cannot deliver quality medical care..." He continued, "It's reaching crisis proportions [when one radium therapist must do the work of three because the hospital cannot fill positions]."¹⁶

At the time Frechette suggested the Pondville study, patterns of care for cancer patients were beginning to change. General hospitals more willingly admitted cancer patients as treatment methods improved. Private hospitals also began to enter the field of cancer treatment.¹⁷ Presumably, an in-depth study would have predicted that such trends would continue and the demand for a specialized semi-rural public facility would dwindle.

The isolated nature of Ritchie's study, however, meant Pondville's closing could easily be blown out of proportion as a political issue. Furthermore, such a report could be extremely vulnerable to any political opposition. Without the support or perspective provided by ongoing capital planning, however, the Ritchie organization would probably have found it difficult to

* Per capita costs in different hospitals cannot be compared dollar for dollar because of the varying combinations of their size and the types of treatment provided in each. The figures in this paragraph thus provide only a rough perspective on the costs of patient care at Pondville.

recommend any other action than it did. The decision has only cost more for the Commonwealth and those whom the facility was designed to help.

Unusable Equipment

From the time the hospital opened, certain equipment has been unusable or faulty. Most of that equipment is connected with the operating room area. After the new hospital building's completion, air-conditioning and a new incinerator were installed both of which have also proved to be defective. The BBC and/or the DPH approved all of this equipment, sometimes against the protests of the hospital's engineers and knowledge that it was not fully operational.^{17a}

An x-ray machine, purchased for roughly \$80,000 when the hospital was built, has never been used because it is incompatible with the hospital's electrical system requirements. The DPH accepted it, nonetheless.¹⁸ In the operating room, the hospital has thus relied on a portable machine that can not take as clear an x-ray, or take x-rays from as many angles.¹⁹

Only in the last year has it been possible to use the hospital's no. 3 operating room. Before that, the lights would buzz loudly after being on for a half-hour to an hour. Using the autoclave (sterilizer) in the operating room when the lights were on would also cause the lights to buzz.²⁰ Finally, the humidistat, a machine that controls the humidity in an operating room, has never worked correctly.²¹ The BBC accepted these defects when it accepted the building as a whole.

On July 6, 1978, the BBC issued a certificate of acceptance for a newly installed air conditioning unit on the hospital's roof.²² In 1979, however, Ernest Sullivan noted that the filter frames had been installed upside down, and the unit was not tied into the fire alarm system.²³

On July 26, 1976, the DPH cited the hospital for violating air pollution regulations with its incinerator.²⁴ After an investigation, hospital officials concluded that it would be more cost effective to install new equipment, than to pay for alterations to the old.²⁵ On December 4, 1976, the BBC awarded a \$61,300 contract to Cumberland Bid Corporation to perform the general contracting work.²⁶ Cumberland installed a Trane Company incinerator.²⁷ In completing the Special Commission's questionnaire, in reference to Pondville's Hospital in 1979, Ernest Sullivan, Principal Civil Engineer for the DPH, wrote, "Incinerator never operated satisfactorily. Has gone month after month not being in proper running condition. It has never met hospital needs."²⁸

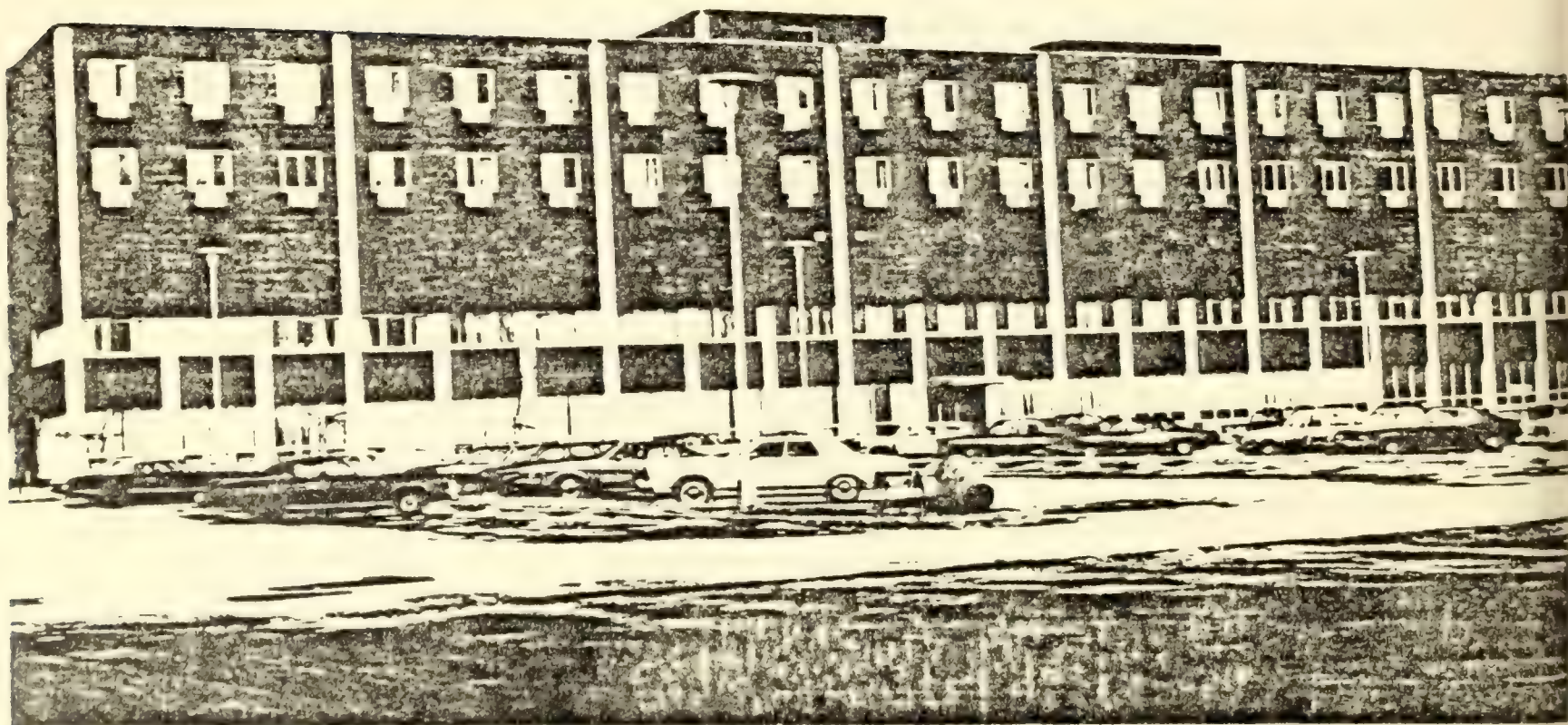
Charles Smith, Pondville steward at the time, wrote to the BBC on April 10, 1978 to say that the incinerator unit simply did not work. (appendix exhibit 1)²⁹ On

February 27 and February 28, 1979, the Trane Co. sent representatives to supervise repair of the incinerator's charging door. Once the door was fixed and Trane personnel attempted to operate the unit, they found that a number of other critical parts needed replacement. They arranged to send a list of these parts to Frank Johnson of the BBC, and, on February 28, 1979, Johnson released them from the job (appendix exhibit 2).³⁰

Parts of the incinerator continue to break down and the machine has never properly functioned as a unit. Pondville Hospital pays to have a trucking company remove its paper and garbage wastes. Norwood Hospital burns Pondville's pathological wastes free of charge, but Pondville has to pay to transport them to Norwood.³¹

Conclusion

The history of Pondville Hospital clearly illustrates the need for effective long-range capital planning in the Commonwealth of Massachusetts. It also brings into question the Commonwealth's present system of reviewing and accepting equipment and workmanship on its public works projects. In particular, the system failed notably in disregarding the recommendations of the user facility's engineers.



Exterior view of Pondville Hospital

Introduction

Owned by the City, the Haverhill Parking Deck is a two-level parking structure located on Main and Merrimack Streets in downtown Haverhill, Massachusetts. The ground level is a reinforced concrete slab, with the upper level constructed of reinforced post-tensioned concrete. The deck contains two sections: "Area A", which covers 56,700 square feet, and "Area B", which covers 38,700 square feet.

Constructed under the auspices of the Massachusetts Department of Public Works (DPW) the deck was designed by Anderson-Nichols and Company, Inc. of Boston, under contract to the Haverhill Housing Authority. Two general contractors have worked on the project: Coronis Construction Co., Inc. of Winchester under a DPW contract, and Jackson Construction Co., Inc. of Dedham under an arrangement with Coronis' bonding company, the Travelers Indemnity Bonding Company of Hartford, Connecticut.

The U.S. Department of Transportation, through the Federal Highway Administration has provided 51.5 percent of the funding for the parking facility. The Commonwealth of Massachusetts has contributed 22.1 percent, with the remaining 26.5 percent the responsibility of the City of Haverhill. A substantial portion of the city's share has come from a U.S. Department of Housing and Urban Development grant.

The deck was conceived in 1974 as a key part in a downtown revitalization effort. The City of Haverhill arranged the funding and technical assistance, and the design contract was awarded on June 19, 1975. Construction began on January 31, 1978, with an expected completion date of November 3, 1978. At the time construction started, design costs were expected to be \$89,400.² The contractor's total bid for construction was \$2,158,000.³

Construction of the parking deck is still unfinished. If completed on the currently anticipated date (April 15, 1981), delays will have extended the construction period by 290 percent. Design costs paid or approved now total \$209,215, over three times the original figure. If claims for an additional \$148,000 in design costs are approved, the total design cost will be 490 percent of the contracted amount. Total anticipated construction costs are currently estimated at \$3,564,369, or 165 percent of the original bid. In addition, the parking deck will contain 88 fewer spaces than specified:⁴ its total of 345 parking spaces barely replaces the 320 parking spaces lost to Haverhill's urban renewal program.⁵

Defects in Concrete Beams

Of the factors contributing to construction delays and cost overruns, the most significant problem has been extensive cracking and spalling in the concrete beams, girders, walls, and slabs in the upper level of Area A. These defects became apparent in May 1979, soon after the forms were removed from the recently poured concrete.⁶ They generated enough concern that the DPW issued an order on June 7 to cease all work on the structure, pending an investigation of the problem.⁷ The work stoppage lasted over 14 months. In all, concrete defects have been responsible for delaying the deck's completion by nearly 19 months, and for well over half of the increased cost.⁸

During the work stoppage, cracks grew progressively wider and deeper, and new cracks appeared.⁹ Significant cracking and spalling eventually occurred in over 100 locations in Area A.¹⁰ At the time work was halted, cracks in the concrete beams, the most important structural members of the deck, were particularly alarming. Even before the engineering study was initiated, the locations and patterns of the cracks clearly indicated severe overstress in the beams.¹¹ It was feared that the cracks might be evidence of a basic structural deficiency in the beams, and that the upper level of Area A might be in danger of collapse. Cracking and spalling in other concrete components, while extensive, were less problematic because they appeared in less crucial locations.¹²

To perform the investigation, the deck's designer hired Keith C Thornton & Associates of Paramus, New Jersey as a consultant. The DPW hired Edwards & Kelcey, Inc., a Boston engineering firm. Frame Associates Limited of Alexandria, Virginia served as consultant to the general contractor.

Keith Thornton's report dated June 19, 1979, found that the beam cracks were related to the placement of post-tensioning tendons within the beams.¹³ Post-tensioning construction allows concrete members to carry additional loading; this technique was used in the deck's construction to increase the column spacing and provide the greatest possible number of parking spaces.¹⁴

In post-tensioned concrete construction, steel cables ("tendons") are placed inside the concrete structural members to carry the bending stresses induced by loads. One end of each tendon is anchored and the other end left free during the placing of the concrete. After the concrete has cured, the tendons are stressed by means of jacks which pull on the free ends. In this manner the tendons, rather than the concrete, takes much of the stress placed on the structural members. If tendons are incorrectly located, however, the load-bearing capacities of the structural members they help to support may be reduced. It also is possible for incorrect placement to cause unbalanced stresses within the structural members, even if overall load-bearing capacities are not affected.

Thornton reported that severe overstress at points within the beams, caused by the incorrect location of the post-tensioning tendons,¹⁵ was responsible for the cracks. He also stated, however, that the beams' load-bearing capacities were acceptable despite the cracks, and that there was no danger of collapse.¹⁶ The Thornton report indicated that the cracks occurred in sections of the beams where the contractor's shop drawings of tendon locations differ from the designer's structural plans:

These [shop] drawings deviate to a great extent ... from that called for in the contract drawings. ... The stress[es] at the time of post-tensioning were 50% higher than the stress needed to crack the beam. ... There is very little reinforcing bars [sic] at this location either to distribute the crack or take the tension forces; therefore the beam cracked. ... Based upon analysis and observation, it would appear that the beams, as designed, are structurally sound and, had they been so constructed, would have no problems. The beams as fabricated (shown on shop drawings) will develop cracks, as they have, due to high stresses. However, they would still perform under an ultimate load condition.¹⁷

Thornton differentiates between "the beams as designed", i.e., as shown on the structural plans drawn by the designer, Anderson-Nichols, and the beams "as fabricated", indicating the actual beams present in the deck. Although it is not explicitly stated, it is apparent that the beams in the deck were constructed in accordance with the contractors' shop drawings. These shop drawings must show every component and procedure the contractor intends to use and are more detailed than the designer's plans. Shop drawings for each component must be corrected and/or approved by the designer before fabrication of the component may begin.

Due to the precision needed for successful post-tensioning, designers provide fairly general schematic designs for this type of construction; the exact details are left until the shop drawing stage. Richard W. Sierk, Vice President of Frame Associates, post-tensioning consultant to the deck's contractor, wrote in a letter dated September 12, 1979 that

Structural drawing for bid documents are by necessity schematic in nature whether the design is of structural steel, conventional reinforced concrete, post-tensioned concrete, or any other building material. This fact is the basis for the requirement of detailed shop drawings on any project. The structural drawings for this project [i.e. the deck] were in my opinion consistent with the industry in their degree of completeness.¹⁸

Examination of the structural plans for the deck's post-tensioned beams indicates that they are in accordance with standard practice, i.e., they contain information on the beams' necessary load-bearing capacities and schematic representations of the required dimensions and tension configurations as envisioned by the designer, Anderson-Nichols. The deck's shop drawings, on the other hand, contain complete construction details. The shop drawings were the responsibility of the general contractor, Coronis Construction, although Coronis' subcontractor, King Erectors, Inc. of Broomall, Pennsylvania, and Frame Associates actually produced the drawings.

It also should be noted that Sierk, the contractor's consultant confirmed the statement of Thornton, the designer's consultant, to the effect that the shop drawings differ from the structural plans in the areas where beam cracks were present: "It is acknowledged that the profile sketched did not precisely match that specified on the structural drawings...."²⁰ Despite this acknowledgement, however, there is substantial disagreement among the consultants about responsibility for the beam cracks.

As the designer's consultant, Thornton drew a sharp distinction between the beam designs shown on the structural plans and the designs shown in the shop drawings. He stated that the beams "would have no problems"²¹ if they had been built according to the structural plans. Since they were instead built according to the contractor's shop drawings, it would seem that the contractor should be held responsible for the beam cracks.

Although acknowledging that the beams were built according to the shop drawings and that the shop drawings differed from the structural plans, the contractor's consultant nevertheless disputed the conclusion that the beam cracks were Coronis' responsibility. First, the Frame report appears to attribute the overstresses in the beams to the designer's structural plans"

...we found that the level of prestressing called for [in the structural plans] was roughly twice that required by the loading, the codes, or good practice.... This overdesign is not conservative prestressing, since it induces loads into the structure that can be detrimental.²²

Second, the report asserts that the designer is partly responsible for the shop drawings:

These [shop] drawings were reviewed by the structural engineer [i.e: the designer] who made corrections to same. The corrections were accomplished and the drawings resubmitted to the structural engineer. Again there were noted corrections, which were again made and the drawings resubmitted to the engineer. This time the drawings were accepted without changes. We believe that the structural engineer [i.e.: the designer, Anderson-Nichols] participated in the development of the stressing method in question. ... The structural design for the deck of course is not the responsibility of the general contractor or his subcontractors...²³

According to this analysis, the structural plans may have included the acknowledged/overstresses in the beams which were simply carried over into the shop drawings and the actual beams. In addition, it would appear that the designer participated in developing the shop drawings, and therefore could share in the responsibility for the defects. Resolution of this dispute would be beyond the scope of this report. The cracks in the beams at the deck are nonetheless serious construction defects that have caused serious cost and time overruns. Parts of this financial burden have been borne by the Commonwealth, the City of Haverhill, the federal government, the designer, the contractor and the bonding company. Determining responsibility for the beam cracks will become

important if it becomes necessary to assign liability for these extra costs.

Other Concrete Defects

In their report, Edwards & Kelcey, consultants to the DPW, note spalling in the walls at points where the concrete beams and girders bear on them, as well as cracks in the ends of beams and girders. The primary cause of these defects is attributed to "differential movement," or the expansion and contraction of the concrete due to changes in temperature. This report claims that the concrete beams and girders were not free to slide over the walls and slab as they expanded and contracted; when stuck to the walls and slab, they cracked at the ends or broke portions of the walls.²⁴

It would appear that the plates between the bearing ends of some of the beams and girders and the walls and slabs did not fulfill their function of preventing this friction. Gordon Guest, Vice President of Anderson-Nichols, states that many of these plates were placed in several pieces; when the beams and girders were poured, some of the concrete leaked between these multiple bearing plates, forming a permanent bond between the beams and girders, and the walls and slabs they rest upon. Thus, when the beams and girders began to expand or contract due to temperature changes, they did not slide freely. Mr. Guest states that the specifications for the deck call for single-piece bearing plates. However, he feels that the contractor was unaware of the possible consequences of this action.²⁵ The contractor and bonding company were unable to comment on this situation. The Commission is not in a position either to support or refute Mr. Guest's assertions, except to note that James C. Deveney, P.E., a technical consultant to the Commission, has concluded that, "in general, it was a good job of concrete work."²⁶

Completion of the Deck

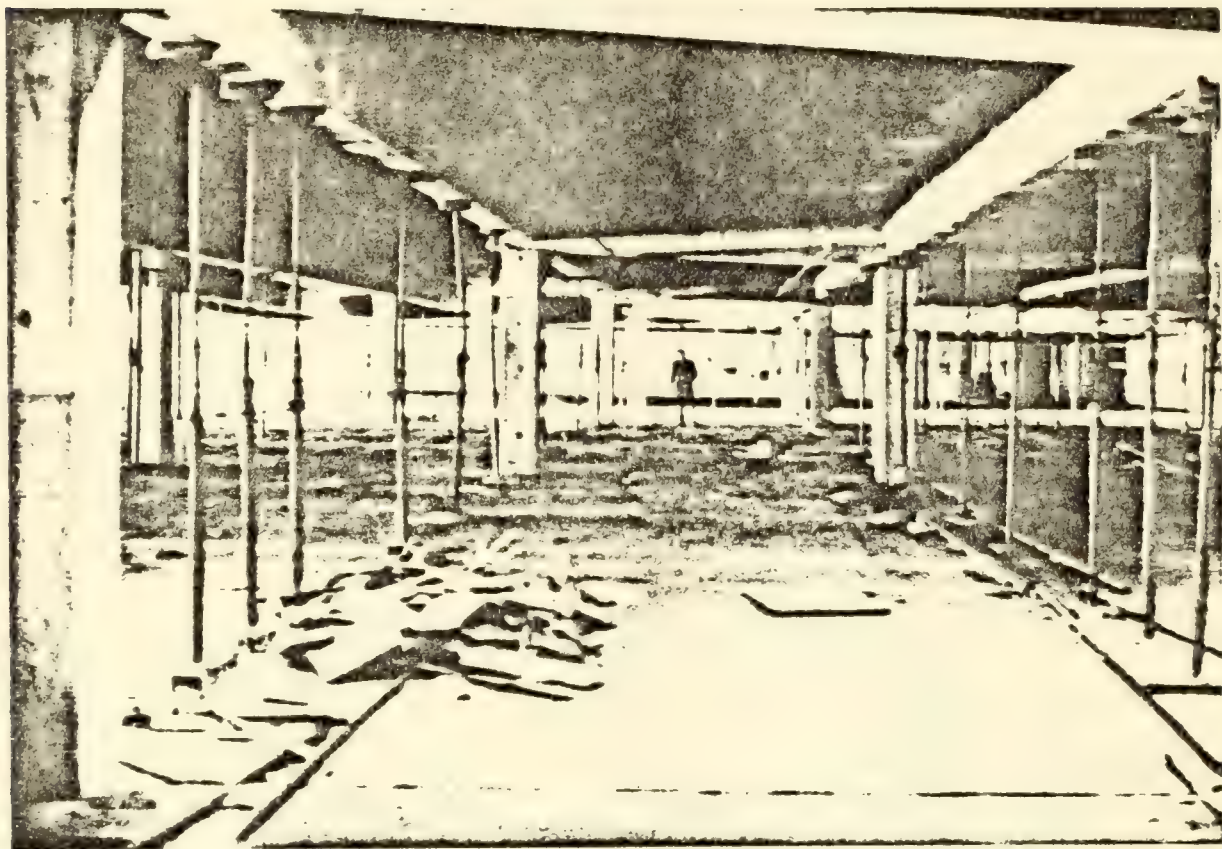
When work on the deck was halted in May 1980, a number of Haverhill merchants circulated petitions calling for its demolition. Frustrated with the excessive delays and the long period of inactivity, the merchants felt the deck's site would be better utilized as an open parking lot.²⁷ On June 10, 1980 Haverhill's City Council voted seven to one to request that the Commonwealth tear the deck down.²⁸

However, on August 31, 1980 Jackson Construction Co., Inc. of Dedham resumed work at the deck under an arrangement with Travelers Indemnity Bonding Company of Hartford Connecticut. Earlier, Travelers had stepped in on behalf of Coronis Construction. Repairs have since begun based on suggestions made by Keith C. Thornton,²⁹ with plans calling for completion of Area A, but not of Area B. Area B will not have an upper level, as previously planned. This measure apparently is intended to speed completion of the structure, and reduce cost

overruns, effectively lowering the deck's capacity from 433 parking spaces to 345.

The lower level slab of Area B, containing 92 spaces, was put in place prior to the work stoppage. On December 12, 1980, it was opened for parking even though Area A was not (and is not) complete.

At the current rate of progress, the Haverhill Parking Deck will finally be finished on April 15, 1981, two years, five months and 12 days after its intended completion. The cost will be at least \$1,526,184 higher than planned, with 88 fewer parking spaces than planned. Serious concrete defects in the deck's concrete structural members has resulted in 19 months of the total 29 month delay, and 80 percent of the total cost overrun. Responsibility for those defects, the resulting delays, and the added expenses, remains to be determined.



Interior View of Haverhill Parking
Deck, With Supporting Jacks

Introduction

The last project William V. Masiello completed as architect under the auspices of the Worcester County Commissioners was the Worcester County Jail. The institution is composed of three one-story buildings spread out over a large area of land in West Boylston, Massachusetts. Presently, the buildings house 323 inmates, 73 more than the number for which the prison was designed.¹

The main building and the service building which contains the prison's heating and cooling systems were part of the same construction contract. The general contractor, Granger Brothers, Inc., built the two structures at a cost of \$7,573,224.50, an amount within three percent of the original May 1971 contract price.² In November 1973, the County of Worcester issued a certificate of final acceptance for the main building. The construction contract for the third structure, a work-release building, was awarded to Schena Construction in December 1972. Schena erected the building at a cost of \$328,676.30.³

Within a year after the Worcester County Jail opened, prison authorities discovered that the new structures were rife with serious defects. The concrete slabs and superstructures were cracking.⁴ Concrete finishes--white stucco on the exterior walls, floor hardener on the floors⁵ and paint, tile and plaster on the interior walls--were cracking and peeling. (Plastering and painting are filed sub-bid areas.) In 1974 a report noted that one crack in the white stucco extended nearly the entire 195-foot length of the minimum security block.⁶ The roofs leaked (a filed sub-bid area). The heating and cooling system equipment (also filed sub-bid work) frequently needed repair. Furniture proved to have low durability. Problems also occurred in the security system.

All of the physical defects result from poor workmanship or the installation of unsuitable equipment or materials. Most of the problems will worsen gradually so that the ultimate cost to the Commonwealth will be the total of repair bills over many years. Even then the extensive repair burden falling to the jail's usual maintenance and repair crew would not be reflected in the figure.

Structural Deficiencies

A. Concrete and Concrete Finishes. Concern over the quality of the concrete in the main service building existed from the time it was poured. Reports by the testing firm of R.J. Kenney and Associates, Inc. frequently recorded failures on the parts of both the general contractor and the concrete supplier, DeFalco Ready Mix, to meet project specifications. The general contractor had been removing forms from the new concrete before the time specified. The contractor's

finishing process did not meet specifications. Batches of concrete arriving at the site were rejected several times for showing excessive slump (a measurement indirectly indicating low concrete strength and high moisture content).⁷ For a fair portion of the job, the aggregates (particles of sand and stone) in the concrete mixture were too large.

It should be noted that these failures to meet specifications occurred in the 15 percent of the work monitored by the testing firm; the practices followed during the other 85 percent of the time were presumably worse or at least not any better.

Of primary concern in these divergences from specifications is the early removal of forms. The practice allows concrete to dry quickly, losing not only moisture but also volume more rapidly than usual. In itself, this rapid drying can lead to cracking. Early stripping of forms also allows new concrete walls to sag and deform; drying then occurs unevenly and the concrete's surface properties are destroyed. Cracking propensities are thus increased. The weak and powdery surface that results from these practices has a low capacity for wear and does not allow finishes to adhere properly.

Contractors have clear incentives to remove forms early. Since they usually receive a lump-sum payment tied to the amount of work done and not to the period of time which the work took, contractors have an interest in completing projects as soon as possible. Forms removed from one wall section a day or more early can be used that much sooner in the pouring of another section.

Kenney representatives called the contractor's attention to the early removal of forms a couple of times before approaching the project's structural engineer, Theodore Weaver Associates, with the issue.⁸ Charles Theodore wrote Masiello & Associates on December 8, 1971 about the form removal, and all other previously mentioned problems with the concrete, urging that the specifications be followed. (appendix exhibit 1)⁹ Although Kenney's field engineers did not again observe forms being removed early, concrete taken out of forms during the unsupervised periods showed all the signs of not having cured sufficiently. Kenney continued to complain to Theodore and to John Wackell, project engineer for the architect, and they in turn to the contractor.¹⁰

Later, sagging and cracking in many of the wall sections became apparent. Leakage problems in the prison caused by cracks in the concrete have been serious. In many areas, paint and tile are peeling because of water seeping through cracks in the walls (appendix exhibit 2).¹¹ The annual costs of maintaining the cracking floor system have increased steadily from \$261.80 in 1976 to \$1,625.25 in 1979.¹²

Another major factor in the adherence of finishes to concrete is the condition of the surface of the concrete. It must be even to allow finishes to properly adhere. While still fresh, the surface must be smoothed or "floated", either by hand or machine. When the surface has hardened, all marks and indentations from the forms have to be filled with cement. Finally, the surface often receives a "rubbing" with a rough material such as burlap to remove very minor surface irregularities.

The finishes in the Worcester County Jail, however were applied to highly uneven concrete surfaces. Even though a change in cement mixture eliminating the large aggregate problem was eventually negotiated with the concrete supplier,¹³ a significant amount of concrete having a harsh and bony texture had been laid prior to that.¹⁴ In addition, the general contractor had only bull-floated (a manual operation), not power-floated, the surface, leaving it less smooth and compacted than required.¹⁵ Most importantly, though, the contractor failed to fill in the indentations left by the forms. When the waterproofing subcontractor, A.L. Freedman and Co., attempted to spray white stucco over the concrete as specified, it became obvious that the thin spray coat could not cover the gaps in the surface (appendix exhibit 3).¹⁶

Freedman, under whose authorization remains unclear,¹⁷ later proceeded with a thicker, hand troweled application. The waterproofing company then submitted a bill for an additional \$20,000 for labor and materials.¹⁸ Granger forwarded Freedman's bill to Masiello & Associates, along with its own claim for \$10,000 for rubbing the exterior walls. Rubbing requirements had been eliminated by an addenda to the original specifications, but Granger claimed that the unevenness of the surface warranted the treatment.¹⁹

After reviewing Granger and Freedman's finishing work on the walls, John Wackell refused to approve a change order for the additional sums. He pointed out that rubbing could hardly remove indentations left by forms. He referred Granger to the sections of the specifications that required filling of marks left by forms and directed that this be done.²⁰ When Wackell wrote his response, however, the troweled waterproofing already covered the concrete surface. To cover the defects in the concrete surface, the covering was of varying thickness and therefore not as stable or durable as a usual application.

The cracking in the white stucco finish has been extensive. Reports drawn up on November 9, 1974 and November 15, 1974 noted cracks in every wall of the buildings in the jail complex. Out of 26 wall sections of the main building examined, 16 contained five or more cracks, some described as large. On the 195-foot north wall of the maximum security block, over 30 cracks appeared in the areas surrounding the windows.²¹

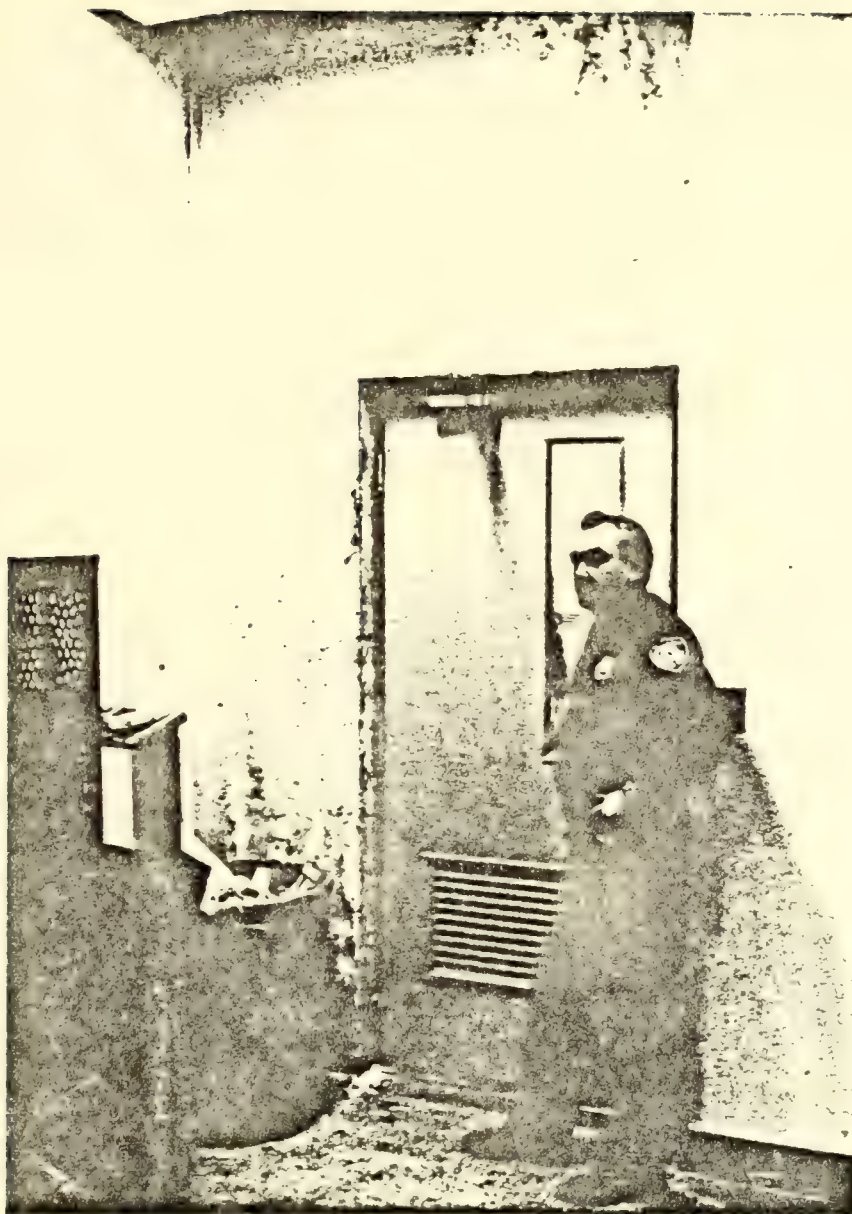
In the work-release building of the Worcester County Jail, part of the exterior walls are made of steel-reinforced block and mortar construction rather than poured concrete. In these areas, the use of substandard or insufficient materials adversely affected strength and moisture resistance. In 1976, when Kenney and Associates were called in to test certain characteristics of the walls, they found that the mortar used in the areas of masonry block construction fell strikingly short of project or generally accepted standards. Rather than meeting the usual strength ratings of mortar used between exterior load-bearing block, the samples Kenney tested resembled that used in decorative brick work. In addition, the mortar contained double the proportion of sand, both by weight and volume, than the mix allowed by the specifications; oversanded mortar transmits moisture much more readily than standard mortar. (Like the rest of the walls in the prison, the masonry walls have evidenced moisture leakage.) Lastly, Kenney also discovered that reinforcing rods were absent from the upper sections of the masonry walls, a condition that decidedly reduces their strength.²²

Examination of the concrete and block construction of the Worcester County Jail reveals that the structure itself is severely defective. Leakage and peeling will eventually work to reduce whatever integrity the structure does have. Not only will the concrete defects entail continuing repair costs, but they will ultimately reduce the lifespan of the facility.²³

B. Roofing and Related Problems

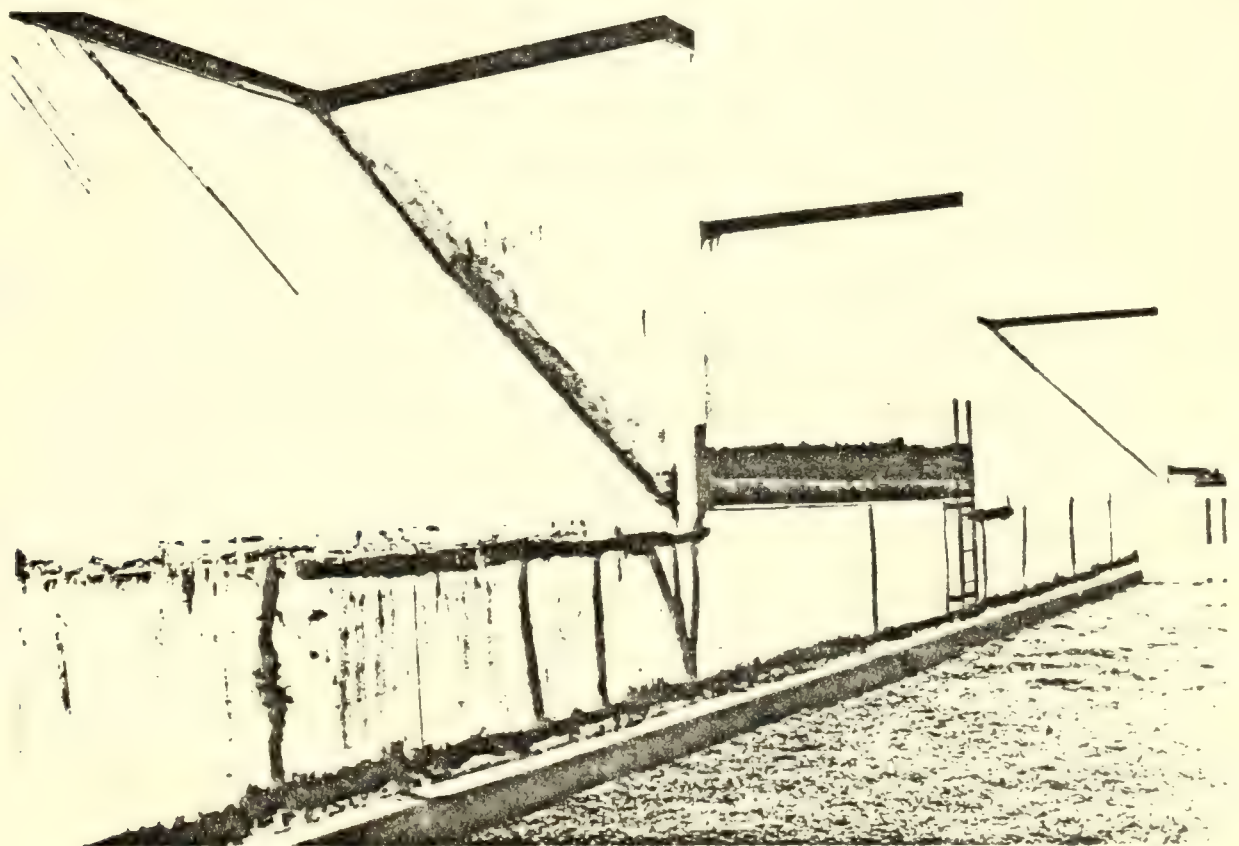
A source of leakage that also contributes substantially to the peeling of interior walls finishes is the roof and flashing system of the jail. Because of poor workmanship, the roof and flashing over nearly all the exterior walls leak. Leaks in the gym area have been so marked as to cause large amounts of plaster to crumble away from the walls in the locker rooms. In the lobby of the jail's main entrance, water leaks directly into the open area.²⁴

Most of the roofing over the Worcester County Jail is composed of layers of felt mopped in tar laid over some form of insulation, and covered with gravel. A report made in February 1980 of the condition of the jail's roofs noted blisters and, in some areas, splitting of the felts.²⁵ These processes almost invariably begin with moisture being trapped within the felts, which results from inadequate protection of roofing materials during storage and the installation of felts in anything other than dry conditions. Moisture between felts will vaporize under the sun's heat. If the resulting blisters are broken by foot traffic or if the felts simply split, more water can then enter into the felt layers. Further blistering and splitting follows, and deterioration accelerates.



Left, paint peeling caused by moisture penetration.

Below, patched roof concrete.



In some areas of the jail, sloping concrete joins tar and gravel roof areas of different heights thus functioning as a sort of roof. These areas are subject to the problems plaguing the concrete throughout the building. All of the sloping concrete is crisscrossed with black lines of the tar needed to repair cracks.²⁶

Roof flashing, the flat metal lining the edges of roofs, is meant to seal the joint between roof and wall. Throughout the Worcester County Jail, the flashing is coming loose from the walls; around the gym it can easily be pulled back to allow a view directly into the building. At points where adjacent sections of flashing overlap, the metal has often buckled or bent outward. The flashing leaks uniformly throughout the facility.²⁷

Furnishing and Equipment Failures

Provision of poor quality goods has resulted in high repair costs and/or the abandonment of equipment. Security equipment, furnishings, the inmate AM/FM radio system, and kitchen equipment in the Worcester County Jail have all fallen short of usual standards of durability. In light of Special Commission findings, this is not altogether surprising. For example, in an interview with Commission staff on January 16, 1980 William Masiello said that only \$75,000 of the original \$125,000 allowance for furnishings was available for its intended use. Graft had consumed the rest.²⁸

Security Equipment

A crucial component of the jail's security system is a network of surveillance equipment including cameras. The money for this purpose was set aside as an allowance item in the original contract. The Fred G. Walters Co., Inc. received the contract and supplied the jail with Telesentry equipment.

The poor quality of pictures taken by certain of the surveillance cameras has been a continuing issue. Nearly all the cameras have required frequent repair. The resultant high costs have led prison officials to simply discontinue use of the cameras in certain areas of installation.²⁹

From 1975 to 1979, repair costs on the cameras have ranged between \$1,862.04 and \$10,169.37 annually, with a total expenditure of \$23,036.11.³⁰ Purchase and installation of the system cost \$60,000.³¹ The automatic cell locking system in the prison's minimum security block has failed altogether, and the institution has substituted a manual system. As early as February 8, 1974, Edward Granger Jr. of Granger Brothers, Inc., informed William Masiello that the doors in minimum security were not working.³² In September 1974, Sheriff Smith wrote the Worcester County Commissioners that Masiello was attempting to negotiate responsibility for repair of the system between the manufacturer, the Folger-Adams Co., and the installer, Stewart-Decatur Security Systems, Inc.

Smith further stated, "This matter cannot be over-emphasized--it is an extensive, expensive proposition. The entire lower floor of this block is useless from a security standpoint."³³

Like so many other of the jail's defects, the jail's own staff eventually resolved the minimum security locking problems. The maintenance crew installed individually operated dead-bolt locks on each cell. The minimum security cells still cannot be closed automatically. Prison administrators now have a means, though, to insure that the cells stay locked when necessary.³⁴

On February 7, 1975, John Wackell wrote to Stewart-Decatur Security Systems, Inc. the following:

... [the locking problem] was finally corrected by the maintenance personnel at the institution. Until the recent resolution of this problem, the situation has caused much grief and aggravation to Sheriff Smith, the Worcester County Commissioners and Masiello & Associates. At this time we would like to go on record as stating that we are very dissatisfied with the lack of cooperation and performance by the Stewart-Decatur Security Systems, Inc. and the Folger Adams Company in helping us overcome this serious and embarrassing situation.³⁵

Furnishings

The contract for furnishings was awarded to Commonwealth Stationers for their low bid of \$65,547.76. Subsequent change orders, providing for furnishings in the administrative offices and in what temporarily served as women's quarters, increased the contract price by \$3,335.41.³⁶ Soon after the facility opened, prison officials noticed the low quality of the chairs in the inmate day rooms and staff dining room. When some of the furnishings began to break down under wear, prison administrators simply replaced them; as the failure rate increased, however, most of the chairs, along with a few tables in the same areas, were simply discarded. An estimated \$17,000 would be necessary to purchase replacements. In the interim, furniture from other parts of the jail has been moved to the staff dining room, and the inmate day rooms remain relatively unfurnished.³⁷

Other Equipment

The repair and/or maintenance costs for several other types of equipment in the jail have also been inordinately high. The following chart lists these expenditures for heating, kitchen, and radio system equipment.³⁸

Heating Equipment

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
Maintenance \$	434.54	\$ 693.84	\$4,205.74	\$ 4,404.00	\$ 2,858.00
Repair	2,419.75	1,858.84	3,492.23	7,685.00	11,431.00

Kitchen Equipment

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
Repair	881.61	1,212.80	2,260.55	4,272.69	2,348.43

Inmate AM/FM Radio System

	<u>1975</u>	<u>1976</u>		<u>1979</u>
Repair	180.12	1,070.60	Maintenance	2,348.43

CONCLUSION

Construction defects and furnishing and equipment failures have left the Worcester County Jail administrators and the Commonwealth of Massachusetts with what staff Sheriff Francis Deignan has called "a terrible situation."³⁹ The facility is inordinately expensive and time-consuming to maintain, and in other ways cannot perform as intended. The Worcester County Commissioners will probably find a need developing for a new correctional institution much earlier than they would have expected when providing for the construction of the present Worcester County Jail.

PLYMOUTH COUNTY SECOND DISTRICT COURTHOUSE, HINGHAM

Introduction

The Hingham Courthouse project is significant not for the substantial costs entailed in construction delays, but rather in how these overruns relate to questionable designer and contractor selection. After failing to circumvent the Designer Selection Board in naming its own architect, Plymouth County nonetheless managed to see selection of its preferred firm, Tallman, Drake & Guay Inc. In addition, the contractor selected for the job, although the lowest bidder, included a unit price for ledge excavation four times greater than that of the next lowest bidder. Months later, substantial change orders were submitted to remove considerably more ledge than the contract specified. The "appearance" of this increased ledge is the issue at hand. Why was it not correctly estimated in the contract documents? Furthermore, why didn't the BBC verify the estimate, especially since it allowed such high unit-pricing for excavation?

Background

The additions and alterations to the Plymouth County Second District Courthouse in Hingham involved mostly new construction rather than renovation of existing facilities. Plans called for construction of a one-story building with an exterior masonry wall, concrete floor and foundation, steel-joist roof; site work was also included. Appropriations for the project totaled \$1,650,000, of which \$1,256,045 was the adjusted bid price. The architect was Tallman, Drake and Guay Inc., and the general contractor, S-P Construction. The construction contract was signed on January 2, 1974; the original completion date was to be 570 days later -- on July 26, 1975.

The addition to the existing courthouse building was relatively well constructed: it suffers from no design defects and few, if any, construction errors. Its successful completion in April 1976, however, occurred only after substantial delays and cost overruns. Along the way, the BBC granted the contractor month-long extensions, ostensibly to excavate additional ledge; S-P Construction Company went out of business in the summer of 1975, resulting in the arrival of its bonding company onto the site. Since S-P could not compensate several of its subcontractors, they too went out of business.* In view of these delays, the change in project coordination, and business failures, completion of construction is remarkable.

*S-P, under Donald Pigeon, failed to compensate New England Drilling and Blasting for 260 c.v. of trench cut rock, @ \$9 c.y. = \$2340. NED&B has since been dissolved.

Designer Selection Process

The selection of Tallman, Drake & Guay Inc. (TD&G) as the project designer is an interesting study in bureaucratic procedure. In 1970, Plymouth County named TD&G the architect for a new courthouse in Plymouth. Charles Drake and Roger Guay, TD&G's retired and current presidents, respectively, have told Commission interviewers that their firm received the contract primarily because of the activities of one of their associate architects, Robert Humphrey.¹ Regardless, the courthouse was completed to the satisfaction of the commissioners.

When the county was considering contracting with TD&G for the Hingham jail, a new state law (c1113, Acts of 1971) came into effect that required BBC supervision on large county projects. This entailed following state procedures on all phases from design to construction, including the state designer selection process. Under state procedures, architectural firms submit applications to the Designer Selection Board (DSB) for a particular project. The DSB reviews these applications, which include the firms' relevant experience and qualifications, and chooses three or four finalists. The Secretary of Administration and Finance (A&F) then reviews the finalists and names the designer.

For whatever reasons, the Plymouth County commissioners sought to circumvent this designer selection process. In an August 1, 1972 letter to Walter Poitras, the commissioners tried to impress the BBC Director with the nature of their understanding with TD&G, i.e., that the firm should receive the Hingham contract. (Appendix exhibit 1.) Director Poitras agreed with the commissioners' request to the extent that he sent a memorandum of approval to Robert Yasi, then Secretary of A&F, on August 10, 1972 recommending that TD&G receive the Hingham project on a continued services basis. His recommendation stemmed from the commissioners' insistence that the Hingham contract had already, in effect, been awarded to TD&G before the law requiring state supervision was enacted. (ex. 2) Why Poitras decided to accommodate Plymouth County is unknown. In any event, Yasi never approved the memo. In fact, Yasi's assistant, Albert Zabriskie, returned it to Poitras on September 6, 1972, with a note: "As we discussed this morning, I am returning memo of approval #73-12 without any action being taken." On that same note was a message from Fred Kussman, Poitras's assistant, that read: "You're entitled to more than this. Official communications are on way." (ex. 3) What these messages mean is open to interpretation, but clearly some sort of discussion of the memo had occurred that morning.

On October 27, 1972, more than a month and a half after Zabriskie returned Poitras's memo, the Hingham project went to the DSB. Public notice for the work was posted November 1, 1972; a total of 65 firms, including Tallman, Drake & Guay, submitted applications. At the 99th regular meeting of the DSB, on November 15, 1972, the board chose TD&G as one of three finalists for the project. Present at that meeting was Edward Kirby, serving as Plymouth County's voting representative.

The names were sent to the new Secretary of A&F, William Cowin (who replaced Robert Yasi), on November 20 for the final selection. On November 29, Secretary Cowin selected Tallman, Drake & Guay as the designer for the alterations on the Second District Courthouse. (ex. 4) A dot had been placed on the original DSB letter next to the name Tallman, Drake & Guay.*

Contractor Selection and Performance

The opening of contractor bids for the Hingham project began on December 11, 1973. Of the dozen firms that submitted bids, ranging from \$1,253,000 to \$1,436,000, S-P Construction Company offered the lowest. (ex.5) The ledge excavation unit-pricing of S-P's bid, however, is clearly out of line with that of other firms. The BBC pays for ledge removal either at a pre-set price per cubic yard for the amount of ledge removed, in which case the bid does not include the cost but is determined by how much ledge is found, or the bidder submits its own unit price. Under unit-pricing, the bid includes the architect's estimate of the amount of ledge at the site and the general contractor sets his own rate per cubic yard for the three types of ledge removal.

Based on unit prices of \$48, \$51, and \$96 per cubic yard for open, trench, and hand-cut ledge removal, respectively, and the architect's estimate of 1,050 cubic yards of ledge (800 open, 200 trench, 50 hand), S-P's total bid for ledge removal amounted to \$53,400. Since the next two lowest bidders had set total removal costs at \$13,170 and \$15,200, S-P's ledge bid appears inordinately high. (See, e.g., ex.6) And since the two non-filed subcontractors' prices were so low, New England Drilling and Blasting charging S-P \$6 to \$9 per cubic yard for blasting, and W. M. Bates, Inc. charging \$2 per cubic yard for excavation, S-P stood to profit handsomely even with the architect's original ledge estimate.

Under section B of "Unit Prices" on the general-bid form is a clause that states: "Any unit-price schedule that contains a quotation which is unduly high or low may be rejected by the awarding authority as unbalanced, and thereby

*See the section of this report entitled "The Award of Design Contracts: An Overview" in Volume 4 for a discussion of other contract awards to Tallman, Drake & Guay, and for a discussion of the significance of the placement of a dot next to the name of a selected design firm.

affect the total cost proposal of this contract." Even though S-P's prices were "unduly high" relative to almost all other bids, the BBC nonetheless allowed the schedule to stand. In order to charge such extraordinarily high ledge-removal rates and still maintain a low bid, S-P had to either undercut other sub-bids where it could by using its own, low filed sub-bids, or reduce its own Item I (general contractor's work) price. S-P chose the former course. For example, the masonry work (a filed sub-bid area) was performed by Scott-Prescott Corp., a sister company to S-P: William Scott was president of both firms. Scott-Prescott's price for masonry was \$90,000 less than the next lowest bid and \$40,000 less than the third lowest. Similarly, the waterproofing and caulking was the lowest sub-bid offered for that work.

On December 18, 1973, the Plymouth County commissioners and BBC Director Walter Poitras recommended S-P Construction Company as the lowest responsible bidder. Three days later, S-P was awarded the contract.

In April 1973, more than six months before the construction bidding on the courthouse project began, C. L. Guild Inc. performed 12 test borings of the work site. From their results, TD&G estimated that 1,050 cubic yards of ledge needed to be removed, a figure that was subsequently used in the bidding process. Several months after work began, however, more ledge was uncovered. On May 28, 1974, S-P submitted an emergency request to the BBC for funds to remove the additional 1,000 cubic yards (800 open cut and 200 trench) at a cost of \$48,600. A week later the BBC authorized S-P to proceed. Over the next several months, the clerk of the works, the project and senior engineers of BBC, the architect, and finally the BBC director officially approved change order #5-4; the final amount was adjusted to \$47,016, based on the removal of 979.51 c.y. of open-cut rock only. Once again, in September 1974, 335 c.y. of ledge were found, over and above the amount addressed in change order #5-4. The BBC rejected S-P's initial request of \$16,000, as well as two further requests of \$13,000 and \$8,700. On November 3, it finally approved change order #26-18, authorizing \$6,772 to cover the cost of removing the 335 c.y. of ledge.

As a result of these change orders, the BBC granted time extensions on the contract, extensions that only delayed an already overdue project. Of greater significance, though, is the fact that S-P gained more than \$53,000 because extra ledge was discovered; in effect, the company was able to double its ledge-removal compensation. What is unclear is how such a discrepancy between the actual and estimated amount of ledge could have occurred. It is conceivable that S-P was manipulating the removal figures, although invoices from both the drilling and the excavating subcontractors state that approximately 2,000 c.y. of ledge were drilled, blasted, and removed. The original estimate thus remains questionable.

Completion of the courthouse project itself also raises doubts about the performance of the general contractor. Although S-P did eventually produce a sound building, this outcome was partly due to the efforts of Judge Alvin Tamkin, the presiding justice in the Second District Courthouse. Prompted by suspicions of the contractor's "intolerably shoddy" practices on past public projects, the judge actively monitored the daily progress and quality of the new construction. Tamkin was familiar with both the contract drawings and the specifications, and related at least three instances in which he either prevented or corrected discrepancies between the specified work and the actual work: an unauthorized substitution of aluminum for copper wiring, an attempt to substitute a lower grade of floor tile, and an attempt to provide less than the premium-grade wood veneer panels as contracted. His mindfulness guaranteed at least the satisfactory construction of the building.^{2*}

Though incorporated in August 1973, S-P changed directors in December 1974 and went out of business in July 1975. All of S-P's contracts before the Hingham project had been in the public sector.³ Despite this relative inexperience, its past performance as Scott-Prescott,** its management changes, and its unbalanced Hingham bid, the BBC selected it as the lowest responsible bidder.

Conclusion

The Hingham Courthouse project raises certain issues about the Commonwealth's designer and contractor selection processes. For instance, how was Tallman, Drake and Guay Inc. selected as project designer? The course of events leading to the choice is questionable: the commissioners' request to Poitras for a continued-services contract; Poitras's memo of approval to A&F; an initial rejection from A&F; a formal application with the DSB; and finally, selection by A&F.

The process of selecting S-P Construction Company's general bid, parts of which are blatantly overpriced, also remains in question. Even the most cursory inspection reveals S-P's efforts to balance the bid in order to profit substantially from the ledge excavation. Whether S-P did or did not know the actual amount of ledge, its bid was clearly unbalanced: given the estimated 1,000 c.y. of additional ledge, S-P would receive compensation well in excess of any other bidder. The drilling, blasting, and removal rates charged by the non-filed subcontractors were so low relative to

*During the course of construction, Tamkin wrote several letters to S-P and the BBC complaining of the lack of progress on the site.

**Scott-Prescott and S-P were essentially the same entity.

S-P's unit prices that the contractor's profit margin was unusually high. S-P quoted the lowest overall bid price, however, and the BBC, either not understanding or caring about the purpose of and the resulting irregularity in the unit prices, approved it.

It should be noted that the Hingham Courthouse is located next to a quarry. Before construction began on the addition, mounds of ledge above the ground were visible on the building site; it would seem likely that a sizeable amount of ledge would also be uncovered during construction. It is possible that TD&G's estimate of 1,050 c.y. was plain wrong; it did not include areas to be excavated for pavement or for water pipes to the site, nor did it include sufficient trench widths for the building's foundation. Considering the location of the building and the surface evidence of ledge all about, however, a higher estimate was certainly in order. However, the Commission could find no copy of the data on which the architect based his quantity estimate.

Like the high unit prices, though, the 1,050 c.y. estimate apparently passed by the BBC unquestioned. Either way, the BBC was remiss, first by allowing unit pricing on the job, and second by not verifying the figures it approved by conducting its own quantity survey.

Synopsis

Dormitories and dining halls built by the University of Massachusetts Building Authority (UMBA), representing a \$60 million dollar investment made from 1960 to 1972, suffer from physical deterioration caused by poor construction, deferred maintenance and student vandalism and will require millions of dollars worth of repairs and improvements. The UMass Building Authority has also spent approximately \$20 million to build a Campus Center and garage complex, the roofs of which leaked even before permanent financing of the project was arranged in 1976. The repair cost has been estimated to be as high as \$2.5 to \$3 million. In addition, the garage portion of this project has had serious cracking and spalling in the structural's concrete beams.

The cost of work needed for all the Authority's projects was estimated in 1978 to be in the neighborhood of \$25 million¹. Due to statutory and bonding limitations, the Building Authority may have serious difficulty raising the money to make these repairs. The Commonwealth, the guarantor of UMBA's \$80 million in obligations, may be forced to underwrite the repairs, or face a Building Authority default if the buildings cease generating revenues before the bonds are paid off.

Much of the information in this report has been derived from four separate sources: (1) a 1977 consultant's report on the condition of the residence halls alone, which estimated that \$12.25 million would be necessary for restoration and improvements; (2) a 1979 study of the roofing failures in the Southwest dormitory complex at Amherst which found the roofs still not repaired; (3) a 1978 Task Force report which recommended the expenditure of \$2.4 million to make the Authority's buildings accessible to the handicapped; and 4) a 1978 report of an UMBA committee on policies and procedures of the Authority: as well as from interviews with Building Authority members and university employees concerned with the execution and operation of the projects of the Authority.

Background

The UMass Building Authority is one of four higher educational building authorities in Massachusetts, the other three being those at Southeastern Massachusetts University, the University of Lowell and the Mass. State College system. All four authorities were established by similar statutes. The UMass Building Authority was created in 1960 ... "for the general purpose of ... providing dormitories, dining commons, and other buildings and structures for

the use of the University, its students, staff and their dependents."² The nine members of the UMass Building Authority; serving pro bono, are advised by a general counsel, the University Physical Plant staff and consultants hired by the Authority. The Authority may initiate a project only at the direction of the Board of Trustees of the University. The Authority issues notes and bonds to finance revenues generated by their operation and use (rents, fees and other income). Thus, no state funds are used to finance the Authority's projects. However, the Commonwealth has guaranteed the bonds of the Authority as provided in the Authority's enabling act.³ When the debt on the buildings is paid off, the buildings become the property of the Commonwealth.

The state's central building agency, the BBC does not oversee or supervise any of the Authority's projects, and the Authority executes its projects in the manner it sees fit, constrained only by the requirements of its enabling act and financing agreements.

The Authority may, by statute, issue up to \$80 million in bonds. This bond ceiling has been exhausted by the total project costs of the Authority's fourteen projects. If UMBA wishes to issue more bonds in the future, it will have to receive authorization from the legislature. The fourteen projects of the Authority, all built at the Amherst campus of the University of Massachusetts from 1960 to 1971, are as follows:

<u>Project</u>	<u>Building(s)</u>	<u>Year of Construction</u>	<u>Construction Cost</u>	<u>Bonds Issued</u>
One	Brett & Gorman	1963	1,792,678	2,220,000
Two	Orchard Hill	1965	4,611,927	5,150,000
Three	Franklin Dining Common	1965	1,475,596	1,825,000
Four	Alumni Stadium, 6 Southwest bldgs	1966	7,185,731	10,600,000
Five	Hampshire Dining Common, Southwest	1966	2,700,000	2,115,000
Six	3 high-rise dorms, Southwest	1966	6,820,000	8,050,000
Seven	Hampden Dining Common, Southwest	1967	2,200,000	2,325,000
Eight	4 low-rise dorms, Southwest	1967	4,976,269	5,650,000
Nine	Berkshire Dining Common, Southwest	1968	2,405,000	2,375,000
Ten	3 low-rise dorms, Southwest	1968	4,660,000	4,700,000
Eleven	Campus Center & garage	1970	16,406,337	22,110,000
Twelve	Sylvan	1971	8,526,814	10,350,000
Thirteen	North Village	1971	3,854,301	4,000,000
Fourteen	Fraternity Park		not constructed	
			<hr/>	<hr/>
			67,614,643	81,450,000

Sources:

Bonds issued: UMBA bond prospectus, April 1976, pp. 20-21.
 All other information supplied by UMass Physical Plant Dept.

The total residential capacity of all Authority dormitories is 8,678 students. (Other residential buildings at Amherst were built by UMBA's predecessor, the UMass Alumni Building Association.)

Summary of building defects

The poor physical condition of many of the UMass Building Authority's buildings has been so serious and widespread as to cause considerable concern among the students who pay for the upkeep and operation of the buildings. The problems are caused primarily by faulty original design or construction, deferred maintenance, vandalism by students or outsiders, or a combination of these.

Leaking Roofs

Roofing problems are by far the most prevalent flaw in these buildings, and are, for the most part, attributable to the construction methods used.⁴ A consultant hired by the Authority in 1979, Holowchak Associates of Simsbury, Connecticut, described one group of residences thus:

Based upon my experience with similar systems and conditions, a review of the construction documents and the field inspection and roof probes, the current roof problems can be directly attributed to poor workmanship.

The roofing contractors were consistent in their inconsistency, as it relates to their application techniques. ... defects were common to all of the residences and these defects individually or in combination or combinations will lead to premature failure of a roof system ...⁵

The design of the roof, however, also contributed to the problem:

Although the cause of the roof problems can be directly attributed to poor workmanship, the architect's selection of materials to comprise the roof system warrant comment.

The materials selected to be the components of the roof system are excellent materials individually but in a system leave much to be desired.⁶

Of eleven major repair contracts let in the last 3 years, 5 have been for repair to ten residence hall roofs at Southwest, at a total cost of \$292,500. There nevertheless remain seven low-rise dorms at Southwest still in need of reroofing, one of which has been estimated to cost \$58,500.⁷ The roofs at the four Orchard Hill residences (built in 1965), leaked within four years after completion, and all four were replaced within seven years.⁸

Roof leaks are not confined to the dormitories. Many dining commons also have leaks which started before the end of the typical life expectancy of new roofs. A University official, described the dining commons in 1978:

The roof has had many leaks and even though a repair was done on parts of the roof, we still have leaks. These leaks have caused structural damage in several areas. [Hampshire Common, built in 1966]⁹

The roof of the Hampden Dining Common (built in 1967) began leaking immediately after completion, and also had to be replaced about five years ago. The roof of the Berkshire Common was replaced in 1977 at a cost of \$53,000.¹⁰

At the Campus Center, built in 1970, the high rise roof began leaking in late 1973 or 1974 and the broad terrace over the concourse level has leaked since the building was opened. When the Campus Center project was put on long-term financing in 1976, an additional \$250,000 was raised to pay for the Center's roof leaks.¹¹ The high rise roof was repaired by 1976, and that problem has not recurred.¹² However the terrace has not been repaired, and the problem is so severe that when it rains, sheets of plastic are draped from the ceiling of the concourse below to direct the water into buckets. In 1978 the Authority hired Construction Consultants, Inc. of Detroit, Michigan to study the problem. Their report, delivered orally in January of 1979, outlined two possible approaches to the repair of the terrace, both of which called for the complete replacement of terrace materials above the concrete terrace deck. (The drawings presented to the university are included in the appendix to this report.) Such a project was estimated in 1979 by the University Vice Chancellor for Administration & Finance George Beatty to cost approximately \$3 million.¹³

Other Problems

Problems with the North Village apartments (married students' housing), built in 1971 at a cost of \$3.8 million, have included roof leaks, condensation problems and inadequate ventilation in the apartments, in the attic space and in the crawl space underneath the building. The build-up of moisture has caused deterioration of painted surfaces; rotting of floors; and damage to carpets and ceilings. In one instance, the toilet in an apartment fell through the rotted floor when a resident sat down on it. The WFEM report (see below) noted of North Village that:

The building construction in North Village is generally very poor, evidencing a lack of knowledge of good architectural detailing procedures.... There are virtually no painted surfaces on the interiors of these buildings.... Both windows and sliding glass doors appear to be of low quality and need a considerable amount of maintenance.... A number of problems in North Village are inherent in the building due to the material used and construction detailing.... The gypsum board backing for tile in bathrooms is not moisture resistant and deteriorates rapidly.... No vapor barrier was installed between the acoustical ceiling tiles and ceiling insulation. Moisture passes through the ceiling tiles and insulation and the resulting condensation on the inner surface of the roof deck drips down and ruins the insulation and ceiling tiles.¹⁴

Proposed remedial roof work included building new roofs over the old ones and providing adequate ventilation to remove moisture. Five years ago, these repairs were estimated to cost \$575,000;¹⁵ today this figure may be closer to \$1 million.¹⁶ Neither of these figures includes the cost of replacing damaged floors and carpets, or repainting.

The structural concrete beams of the \$4 million Campus Center garage have been cracking and spalling since 1976. The building also leaks and has suffered water damage as a result. The cause of these problems has not been fully determined although the consultant hired by the University in 1978, Loomis and Loomis, noted a possible lack of reinforcing rods in the beams; lack of provision, in design or in construction, for thermal movement; and water leakage and poor drainage.¹⁷ Two repair contracts totalling \$97,715 were performed in 1978 and 1979. These jobs entailed the replacement of fallen (spalled) concrete, epoxy injections into cracks to strengthen beams, and the painting of metal damaged by water.¹⁸ However, a former UMBA member raised doubts as to whether the cause of spalling had been removed by the work. Indeed, some of the work done in 1979 was to repair patches that had been placed the year before. Continued inspection of the garage, as proposed by Loomis and Loomis, may well reveal the need for further repairs and remedies to the garage's structure and waterproofing.¹⁹

Condition of Dormitories

In 1977, the Cambridge firm of Wallace, Floyd, Ellenzweig, Moore, Inc. (WFEM) performed a physical survey of all residence halls and housing at the Amherst campus. Their recommendations proposed the expenditure of \$20.7 million for the restoration and improvement of dormitories. Of this amount, \$12.25 million was for work in UMBA buildings. The WFEM report described three categories of work: (1) "Restore to original condition," (\$4.7 million) which included roof repairs (\$618,000), deterioration and damage, especially in painting and carpeting. WFEM estimated that \$1.2 million of this restorative work was attributable to damage; (2) "Selected code items," (\$8.7 million) which included sprinkler systems, fire alarms, other fire and life safety code work and handicapped provisions for selected buildings; and (3) "Selected modernization items," (\$7.4 million) which included non-urgent replacement of doors, modernization of heating systems, toilets, laundries and kitchens. WFEM's figures were not derived from the identification and estimation of each item of necessary work, but rather from a survey of the prevalence of deficiencies. All figures represent 1977 estimates; and do not include further deterioration which might occur after the report was issued.²⁰ (A copy of the summary from the WFEM report is included in an appendix.)

In September, 1979 the Vice Chancellor identified \$4.2 million worth of work done since the WFEM report, of which \$2.4 million was routine maintenance done by the Physical Plant Department, \$1.5 million was done by outside contractors, and \$352,000 was done by Physical Plant workers beyond routine maintenance.²¹ However, it is hard to say exactly how much of this work corresponds to work recommended by WFEM, especially since the WFEM report did not include ordinary "housekeeping" aspects of maintenance.²²

Conclusions

Given the serious nature of the physical problems facing the Building Authority, it is all the more distressing that the Authority has been unable -- or unwilling -- to take measures to solve them. Many of these problems have been chronic for years. Because the projects are built, operated and maintained out of their own revenues and no state capital outlay funds may be spent on them without the legislature's approval, the Authority has been forced to defer much needed repair.

A 1978 Committee of three UMBA members estimated that up to \$25 million would be needed to repair the Authority's projects.²³ Their report not only identified the construction problems discussed above, but also described an

administrative structure and a tangle of agreements and requirements which effectively bound the hands of the Authority in decision-making and the University in managing and operating the projects.

Especially problematic were the Management and Services (M&S) agreements by which the university manages and operates the projects for the Authority, collects rents and fees, and remits to the Authority monies for debt service. A 1978 Housing office document also identified a number of difficulties with these agreements. (An excerpt is included in the appendix to this report.) For example, these agreements require that all funds from individual projects be kept in separate accounts and may not be used for the upkeep of other projects, creating unnecessarily complicated accounting procedures. Poor accounting procedures exacerbate the problems with the M&S agreements; this led to the overstatement, in the 1976 Project Eleven bond prospectus, of the balance in the Project Eleven accounts.²⁴ A report on the accounting error and UMBA's financial reporting procedures done for the Authority by Clarence Rainess & Co., certified public accountants, stated that:

The person or persons preparing the financial statements are either unfamiliar with the data, untrained in its meaning, or are not working in an environment in which professional care over financial data is exercised and encouraged.

No individual or department is either in existence at the University, or engaged by the University, which has the independence in professional attitude necessary to review and critique the financial reporting of the University.

The financial statements are not presented in a consistent manner or in accordance with generally accepted accounting principles.²⁵

The 1978 UMBA committee recommended that the Authority address the most urgent repair needs, devise a master plan for the implementation of these repairs, obtain an independent financial advisor, and establish an office on the Amherst campus. The Authority voted on September 20, 1978,

To approve in principle the recommendations of the Policies and Procedures Committee as set forth in Part 3 of the Discussion Draft dated September 20, 1978, including specifically the establishment of an office on campus; the holding of at least bi-monthly meetings, including at least one meeting on the Amherst Campus; the holding of at least one meeting by a committee of the Authority with the Buildings and Grounds Committee of the Board of Trustees; the establishment of regular meetings by an Authority representative with University officials with regard to renovations, alterations and repairs of Authority buildings; an analysis of the needs of the Authority and the Authority projects;...²⁶

However, it has not established such an office. Indeed, its last meeting (as of the time of this writing, December 1980) was on October 31, 1979. Nor has the Authority retained an independent financial advisor to determine means for financial future repair work.²⁷

In drawing up its legislative proposals for the improvement of public construction in Massachusetts, the Commission felt it vital to balance the Authority's financial independence with the need to ensure that these state-guaranteed projects are properly built and maintained. The Commission felt that the Authority should be primarily responsible for the implementation of policy set by the Trustees and for funding of projects. Having no professional staff of its own, the Authority simply could not meet its responsibility for design and construction supervision. For these reasons, the legislation proposed by the Commission and passed by the legislature in 1980²⁸ provides that Authority projects larger than \$25,000 be administered, like other state agency projects, by the division of capital operations and planning.²⁹ Smaller projects would be administered by the Authority and subject only to reporting requirements to the central agency. (Most likely, these projects would be performed, as in the past, by University professional staff retained by the Authority.) Responsibility for project initiation and funding remains with the Board of Trustees and the Building Authority.

Another significant change in the past year has been the restructuring of the state's higher education system, which placed all higher education institutions under the jurisdiction of a Board of Regents.³⁰ This change has led some to suggest that the four Building Authorities be merged. Whatever the desirability of such a change, the Commission feels that it should not alter the division's responsibility for carrying out the design and construction of building authority projects.

If the cost of repairing the projects proves so great that UMBA defaults, a state takeover of UMBA's obligations (as provided in the State's guarantee of the bonds) will still not make the problems go away. Students will have to continue to live and eat in these buildings, and students and/or taxpayers will have to pick up the tab for the continued maintenance and operation of the projects.

For these reasons, it is crucial that the Authority meet to deal with the problems, and that communication among the participants -- UMBA, university and state officials, students and the general public -- be openly and constructively maintained while the problems, both physical and administrative, are solved.

MCCARTHY APARTMENTS

Introduction

Funded by the Department of Community Affairs (DCA), the McCarthy apartments is a seven-story housing for the elderly project, located between an elementary school and a shopping center on Main Street in Melrose. The building's 150 units represent almost one-third of the number owned by the Melrose Housing Authority (MHA).¹ When the McCarthy Apartments opened for occupancy in October 1977, it constituted well over half of the town's public housing stock.²

The Melrose Housing Authority came into existence in 1968. By 1971 it had already opened one apartment building for the elderly, Steele House and begun the process of commissioning another. In early 1973, the authority contracted with William Krokyn for the architectural work on the second project.³ His designs, however, underwent numerous revisions. Three times the authority changed the number of units to be included.⁴ Finally, in September 1975, the Melrose Housing Authority awarded the construction contract to the lowest bidder, Schena Construction Co. Inc., and construction began later that year.⁵

The construction history of the McCarthy Apartments is an example of the absence of meaningful supervision at many levels, and of failure to follow required change order procedures. The building constructed differs significantly from the design plans and specifications--including the absence of critical supporting materials--making the building structurally unsound. Although the McCarthy Apartments have been occupied for several years, the Melrose Housing Authority has never accepted the structure as complete. The remedial work required to correct the building's defects is currently estimated at approximately \$4 million, an amount equal to its original cost. ⁶ This figure, of course, does not include the human costs imposed upon elderly residents whose lives will be disrupted while the corrective work is done.



Exterior view
of the
McCarthy Apartm

BACKGROUND

Serious problems occurred early on in the building's history. While investigating delays in the construction process in February 1977, Melrose Housing Authority members discovered a backlog of some 60 to 70 unprocessed change orders.⁷ For DCA building projects, all variations from the originally specified plans require approval by the architect, the local housing authority, and a representative of the DCA on a form called a change order. Schena, the general contractor, had filed change order proposals with the architect who not only failed to address them himself but also did not transmit them to either the MHA or the DCA. While the MHA began processing the backlog of proposals as rapidly as it could,⁸ the general contractor and sub-bidders had already proceeded with many of the changes.

While these change orders did not affect the substitutions and failures to conform to specifications that occurred, they resulted in significant revisions to the building's original design. These revisions introduced new construction requirements not made known to the contractors and subcontractors--or to the agencies that evaluated their qualifications--at the time the job was bid and contracts awarded.

In July 1976, Schena installed a roof that differed substantially from the one detailed in the original specifications.⁹ (The contractor did not even propose a relevant change order until February 1977.¹⁰) Instead of a tar and gravel roof, a polyvinyl chloride membrane roof topped the structure.¹¹ Although widely used in Europe, this type of roof had never been installed in the United States.¹² Present MHA Executive Director Robert Nason testified before the Commission that Krokyn had justified the change as providing increased insulation. According to Nason, the architect also suggested that the authority take a \$2,500 credit since the PVC roof cost less than a tar and gravel one.¹³ Later the housing authority found that this was a false economy (Appendix Exhibit 1).¹⁴

By the spring of 1977, serious roof leaks affected areas throughout the building, including the first-floor common room.¹⁵ Krokyn asserted that the roof had been installed in an unworkmanlike manner:¹⁶ it was spongy, had gaps in many places, and had standing water in many others.¹⁷ Fogel Associates, consultants hired to investigate the situation,¹⁸ reported that mutually incompatible materials were used resulting in deterioration of the roof and inadequate adhesion. The firm expressed fear that a strong wind might tear the roof from the building (Appendix Exhibit 2).¹⁹

While the last of the roof analysis was underway, the McCarthy Apartments received its first residents.²⁰ Melrose Building Commissioner Norman Blaney had been very reluctant to issue even a temporary occupancy permit. The Melrose Housing Authority had then thought, however, that the problems were easily remediable. The authority allowed occupancy to begin in response to the community's immediate need for housing; more than 500 names already filled the waiting list for the building's 150 openings.²¹

Construction and design flaws in the McCarthy Apartments continued to manifest themselves. Shortly after the tenants moved in, a wave of false alarms began. Investigations revealed that the fire alarm sub-bidder had not wrapped the wiring in metal conduit as required by the manufacturer's specifications, thus leaving the alarm system susceptible to short-circuiting by CB radio waves. It also became apparent that the defective roof did not account for all the leakage in the building. Fogel Associates suggested that the walls themselves admitted moisture.²²

In April of 1978, the Melrose Housing Authority voted to hire R.J. Kenney Associates to examine the problem of moisture penetration of the building.²³ Beyond confirming Fogel's ideas, Kenney's initial test findings brought the entire structural condition of the McCarthy Apartments into question. The mortar did not meet minimum standards of the state building code; neither the mortar nor the brick facing met contract specifications. The Melrose Housing Authority then signed a contract with R.J. Kenney Associates to have the latter perform structural testing on the building.²⁴ In January 1978, the MHA also hired the architectural firm of Childs, Bertman, and Tseckares Associates, Inc. (CBT) in January 1978 to examine the building as a whole.²⁵ As a result of these investigations, the MHA terminated William Krokyn as architect on the project in May 1978.²⁶

In testimony before the Commission, Nason said that by September 1979 he and his colleagues realized the full dimensions of the problems facing them.²⁷ By October, CBT informed the MHA that the bridge connecting the two wings of the building could not, theoretically, support its own weight.²⁸ The housing

authority quickly shored the bridge with foot-wide pillars of wood.²⁹ (See Illustration 1.) Simpson Gumpertz and Heger, CBT's structural analysts, reported that "The design of the main buildings [given their connection with the bridge] does not comply with the Massachusetts State Code for seismic resistance" (Appendix Exhibit 3).^{29A}

CBT found that the tile and carpet supplier had made fraudulent substitutions. They also reported that the fire pump actually installed differed substantially from the one originally specified, and could only undergo maintenance if the building's water main was shut off.

R.J. Kenney and Associates uncovered serious structural deficiencies resulting from the general contractor's failure to comply with project plans and specifications. The absence of reinforcing rods in many structurally crucial locations convinced those analyzing the building to shore the entire east wing. In only 3 out of 100 test instances did Kenney Associates find the floor anchors adequately installed to tie the floors into the vertical support structure. In some cases the structural omissions were unprecedented; the testing firms could not determine the strength of the existing vertical walls. For example, above the fourth floor, the masonry contractor failed to grout the vertical joints between the masonry blocks.

Unfortunately, completion of the Kenney and CBT reports did not signal the end of the discovery of major defects in the McCarthy Apartments. In public testimony before the Commission, Executive Director Nason described how the housing authority learned, in the spring of 1980, that the plumbing had been so installed that waste water and sewage had to flow uphill, if it flowed at all.

Q: Now, since December of 1979, have any other major problems been brought to your attention by any of the consultants that you have hired?

A: There are many minor problems, but the one that comes to mind that is a major problem, is the waste line backup. The entire office waste line system is uphill and as a function of that we have continual backup in the office area to the point we now have test pits and a bathroom that no longer works, and it's rather difficult and arduous working conditions.

* * *

Q: I'm just trying to make sure I understand the sequence. We have initial occupancy in October of 1977, and we are now almost in the middle of 1980, June of 1980, and it's at the point where we are about to get the report on the plumbing problems running uphill.

A: It didn't develop until recently, the backup situation.

Q: The building has been occupied for a couple of years, almost three years?

A: This relates specifically to the other area. It was not a major problem within the last six months. We thought it was just traditional backups, the more it happened the more we looked into it to discover it was not a blockage problem caused by usage. It's a construction problem in terms of how the system was installed.

Q: And it took that much time for the problem to become sufficiently significant, I guess, for you authorize the investigation and to learn through that investigation that the piping had been laid up hill?

A: There were other more critical issues, shoring the building is one of them. We had problems with another building that demanded a great deal of attention, so the staff became accustomed to the waste problems.

* * *

Q: Did you know that the plumbing had problems originally?

A: Not initially. It became apparent after we had shored the building initially. In 1978, the fall of 1978, we did further investigation, and during the latter part of 1979 our plumbing problems became more than what we had anticipated as customary usage problems.

Q: How did it demonstrate itself?

A: I walked into the office one night at 7:30 and there was a river coming out of the office floor.

Q: What floor is the office on?

A: It's on the basement level.

Q: The problem of the backup, the problem of the backup of waste was obviously first a design problem, design mistake, right?

A: I am not in a position to address that issue fully. My understanding, as a layperson, it's more construction related than design. It's the pitch of the waste line.

Q: That was done by the plumbing filed sub-bidder?

A: That is correct.

Given that present estimates of repairs and related costs equal the building's original construction costs ³³, the Melrose Housing Authority considered abandoning the building. Nason testified, however, that they found human costs militated against this decision:³⁴ "The reason many McCarthy Apartments residents continue in occupancy during construction is primarily the people who live there, despite the conditions, have no other place to go, they would rather be there, notwithstanding the voluntary relocation program that we have initiated. I think it's a statement on the drastic need for housing in the Commonwealth."³⁵

The MHA has carried out a program of volunteer relocation for those residents willing to move to comparable units. Through attrition and the relocation process, the authority intends to create the 28 vacancies necessary for repairs to begin.³⁶ In the course of the remedial work, all residents will have to move once, and some twice, within the building. Every floor will undergo major reconstruction.³⁷

Repairing the building will not be a straightforward process, nor will it produce the building as originally designed. In his testimony before the Commission, Russell J. Kenney, director of testing for R.J. Kenney and Associates, gave a brief example of the problems:

Q: My question is, can it in fact be done?

A: Yes, certainly remedial repair techniques will have to be developed since none of the mortaring in the entire building on the loadbearing walls meet minimum code requirements. How do you fix the mortar joints? You can't scrape it out. There are certain types of surface-binding techniques and other techniques that can be used to render the walls structurally [safe] to take the same forces as if it would have been built correctly.³⁸

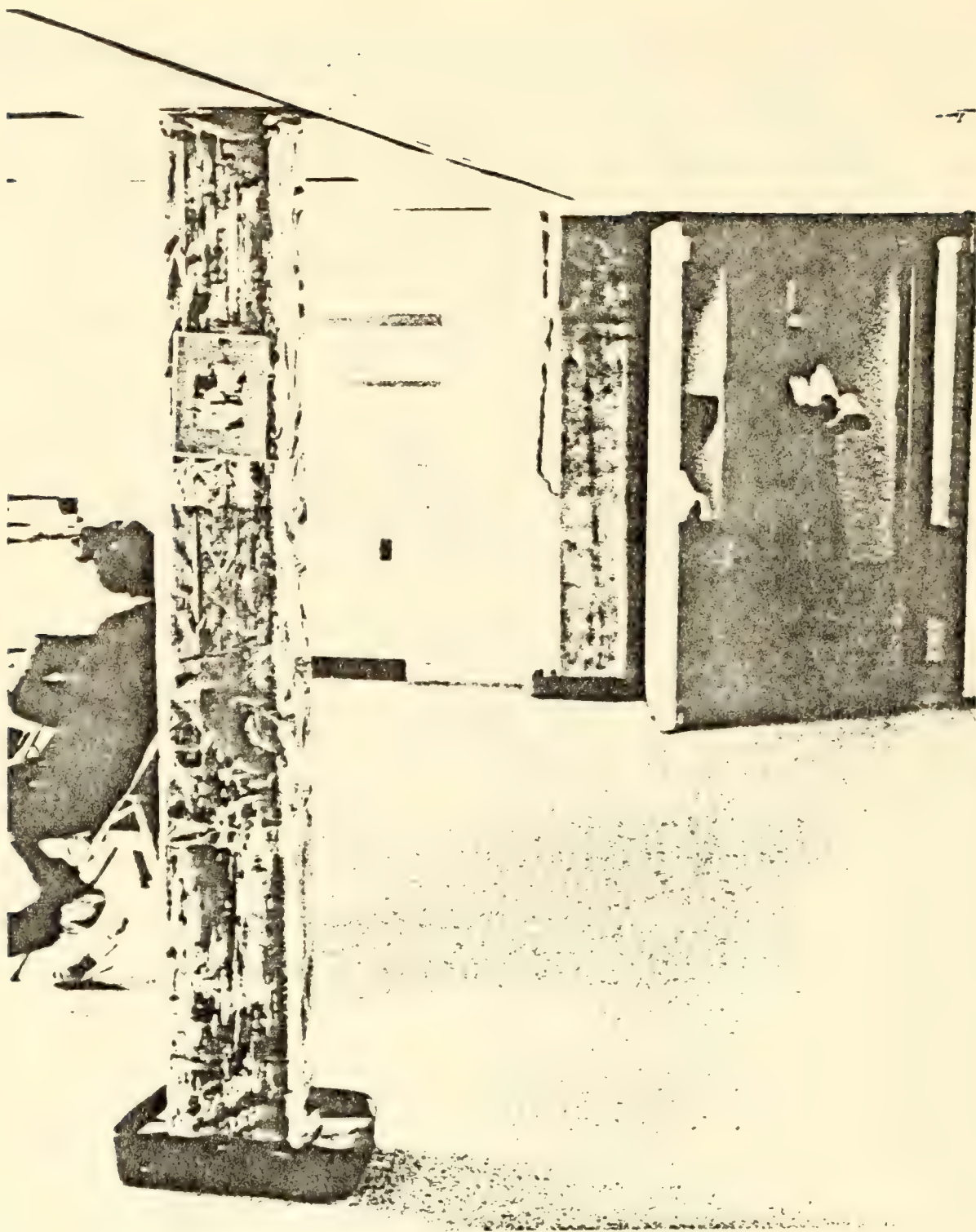
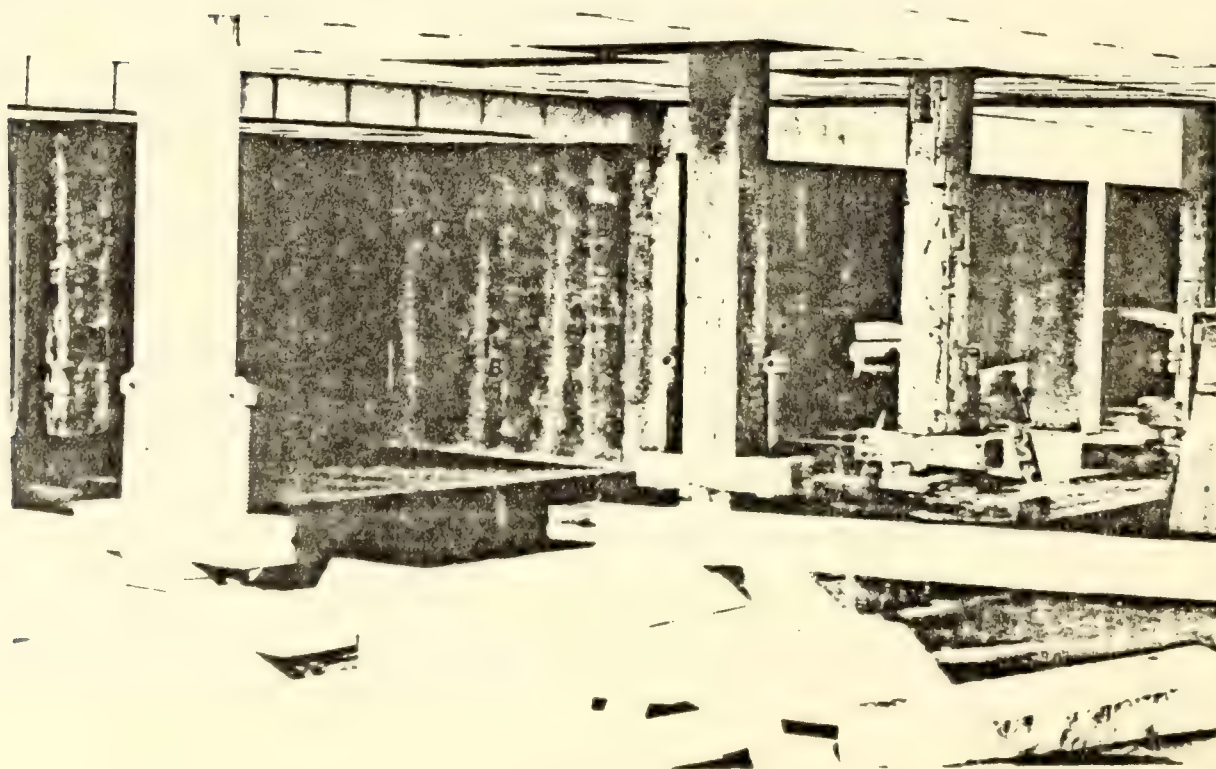


Illustration 1



BUILDING DEFECTS

The rest of this report will describe the building's deficiencies. In most instances they resulted from the failure of contractors and subcontractors to perform work according to project plans and specifications. In other instances, contractors and subcontractors made fraudulent substitutions when supplying materials and equipment. The discussion in this section is grouped, where possible, by problem category, e.g., structure or leakage, and is presented approximately in the sequence in which the defects were uncovered.

Moisture Penetration of Exterior Masonry Walls

R.J. Kenney and Associates, Inc. reported in July 1978 that, given the absence of other provisions in the plans and specifications, "the original design must have contemplated that the primary protection of the interior of the building would be accomplished by means of a water tight exterior face wall."³⁹ Yet their 1979 summary of defects related to moisture penetration began: "Exterior walls easily penetrated by driving rain."⁴⁰ The reasons were not difficult to ascertain.

To begin with, investigators analyzed the brick. Project specifications set maximum brick absorption at 10 percent; the bricks used had a rating of 9.88 percent. Kenney and Associates felt that the guideline allowances were extremely high, given the brick's functions and the climatic region.⁴¹

Although mortar is not ordinarily considered a factor in moisture penetration, Kenney scraped up samples for testing. Its physical appearance alone raised doubts that the mortar would meet any of the various standards.⁴² Indeed, the mortar failed to fulfill both project specifications and the minimum requirements of the State Building Code.⁴³ Kenney explained to the Commission that the American Society of Testing Materials (ASTM) graded mortar according to strength. Consequently, the use of a lower grade mortar would not necessarily result in lower water resistance.⁴⁴ However, the mortar used in the McCarthy Apartments varied so far from any ASTM categories that it contributed significantly to the moisture penetration problem.⁴⁵

The listing below shows the composition of a sample of mortar types in the ASTM classification system:

MORTAR PROPORTION BY VOLUME					
Mortar Type	Parts by vol. of Portland cement	Parts by vol. of Masonry cement	Parts by vol. of hydrated lime	Aggregate measured in damp conditions.	ave. compressive strength (ps)
M	1	1	-	not less than	2500
M	1	-	1/4	2 1/4 and not more than 3 times the sum of the volume of cement and lime used.	1800
S	1/2	1	-		
S	1	-	1/4 - 1/2		
N	-	1	-		750
N	1	-	1/2 - 1 1/4		
O	-	1	-		350
O	1	1	1 1/4 - 1 1/2		

Type M is the most commonly used, and provides the greatest strength. Note that even the type that provides a compressive strength of only 350 pounds per square inch (psi) allows no more aggregate than three times the volume of cementus materials.

Project specifications called for type S, and in some places type N, mortar. The following chart compares the project requirements with samples taken from three areas of the building. Note the volume of aggregate:

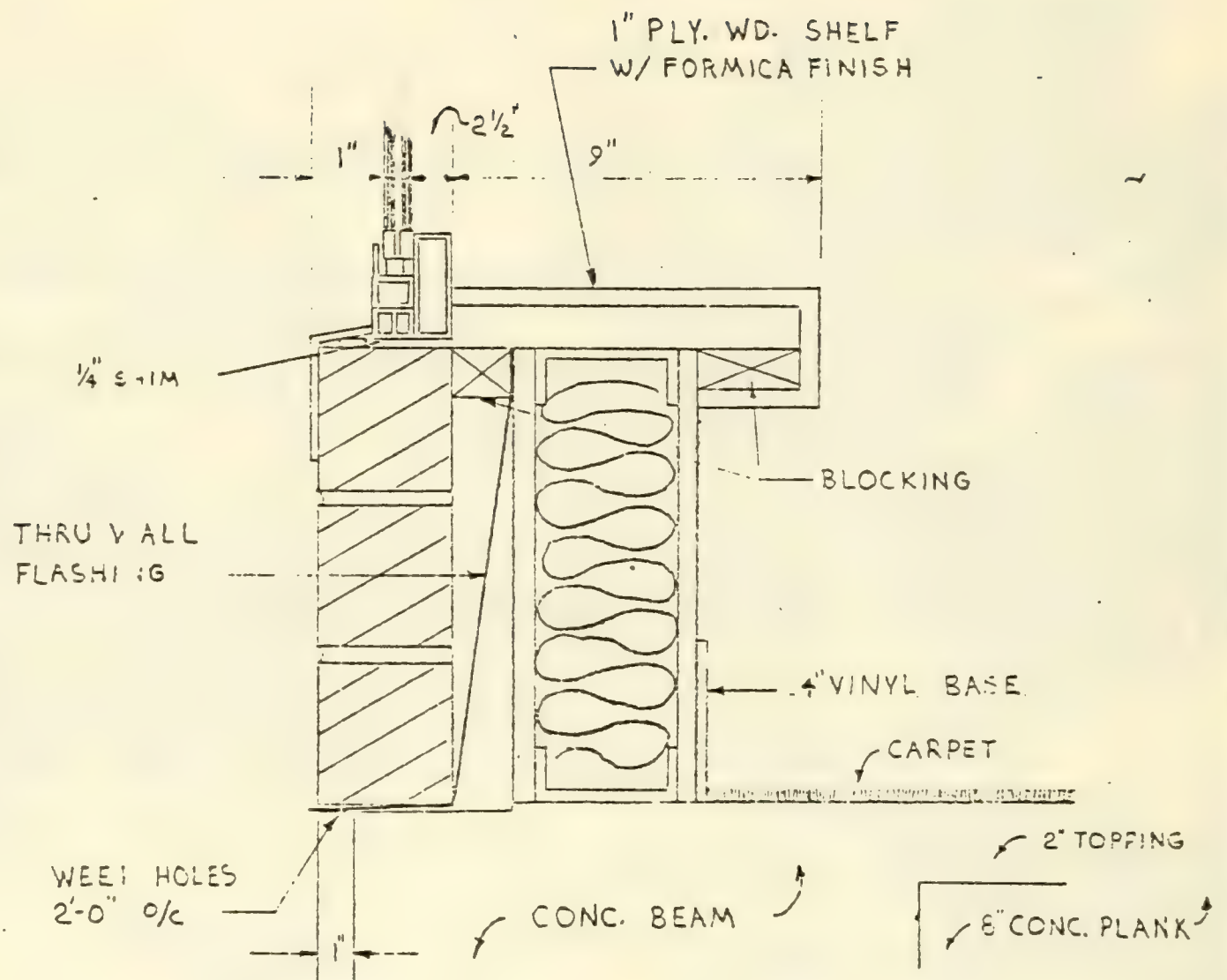
PROPORTION BY VOLUME				
	<u>Project specs</u>	<u>A</u>	<u>B</u>	<u>C</u>
cement	1	1	1	1
lime	.5 (max)	.73	.75	.73
aggregate (sand)	4.5 (max)	7.90	6.82	6.64

When analyzed by weight, the average mortar tested yielded 260 percent more sand per pound of cement than allowed by either the project design or the state building code. The high percentage of sand made the mortar unusually porous.⁴⁶ Sand is substantially less expensive than cement or lime. Therefore this mixture is advantageous for a contractor to use.^{46A}

Workmanship in laying the mortar only exacerbated the problem. The back of the brick facing had hollows in some joints, while excess mortar dripped out of others (see Illustration 2). Head joints, the vertical spaces between the ends of bricks, varied irregularly in size.⁴⁷ Similarly, workmanship in the application of caulking failed to meet usual standards. Caulking around the



Illustration 2



SCALE 3" = 1'-0"

HOUSING FOR THE ELDERLY MELROSE, MA.

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R. J. KENNEY & ASSOC., INC.

Illustration 3

windows proved defective in 30-40 percent of all cases. Either the caulk had been insufficiently mixed, laid on a dirty surface, or just improperly applied. In some instances, an attempt had been made to cover up defective caulking with new material.⁴⁸

The absence of provision for general flashing and weephole systems in the designs had led Kenney to conclude that the architect intended to rely heavily on a water tight external wall.⁴⁹ Illustration 3 depicts a typical flashing installation. A sheet of PVC is laid at slab (floor) level between the interior and exterior walls, and sloped towards the exterior. At the base of the slope, two weepholes are drilled. Any moisture that penetrates the brick facing is carried off by the sheet of PVC and eliminated through the weepholes. Usually, flashing encircles the perimeter of every floor of a load-bearing masonry building. Project designs required flashing systems only over windows, around the ground floor, and partially around the roof and penthouse.⁵⁰

Nevertheless, the general contractor installed flashing around the perimeter of every floor. However, the flashing in the McCarthy Apartments only contributes to the building's moisture problems. In most areas, mortar and grout dropping from the brick facing have filled the flashing, clogging the weepholes (See Illustration 2). The flashing thus acts to trap rather than to carry off moisture between the walls. Further, in numerous areas workmen failed to turn the flashing up at the interior wall. The PVC sheets then extend under the gypsum dryboard and channel water directly into the apartments.⁵¹

In their July 1978 report, Kenney and Associates emphasized the importance of remedying the flashing problem as quickly as possible. Trapped water had already seriously deteriorated wall board in the apartments, and would only continue to do so.⁵² On the seventh floor, trapped water that froze actually pushed bricks out of the facing.⁵³

Minor Structural Flaws and Insulation

Among the structural and insulation defects in the McCarthy Apartments is the absence of j-molds, which hook around the edges of windows, helping to secure the frames to the walls. The 1978 Kenney and Associates report pointed to the lack of these aluminum fittings on all the windows in the project,⁵⁴ as well as the frequent absence of window blocks, which play a similar role.⁵⁵ When they removed the dry wall near the windows, investigators did not find any insulation at the junctures between the window frames and the masonry.⁵⁶ The points where interior and exterior walls met also lacked insulation.

Although project specifications required that a two-inch cavity surround the joint and be filled with insulation, the cavities remained empty.⁵⁷

Major Structural Defects

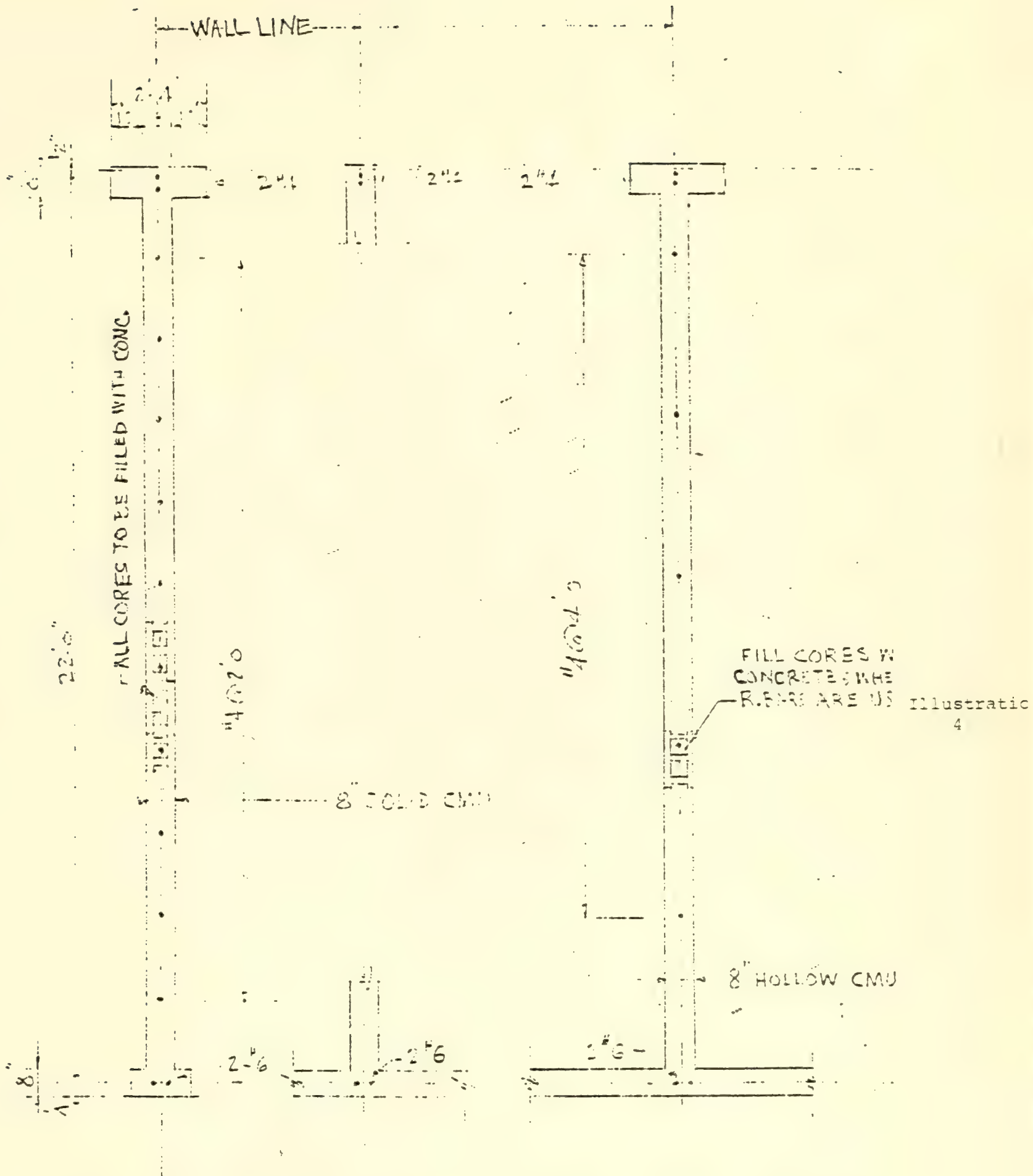
While performing absorption analyses on brick samples, Kenney's laboratory tested other samples for compressive strength. Specifications required that the brick be capable of withstanding pressures of up to 8,000 pounds per square inch (psi). The strength of the bricks sampled, however, averaged only 6,076 psi.⁵⁸ Certain details related to moisture penetration also contributed to structural weakness, particularly the oversanded mortar and unworkmanlike bricklaying. These conditions alerted the investigators to the possibility of further structural deficiencies.

A reinforced masonry framework carries the weight of the McCarthy Apartments. In other words, the building was designed to rely on a system of masonry blocks filled with grout in some areas and, in some of the grouted areas, reinforced with metal rods*. Though similar to mortar in purpose and appearance, grout contains a much higher percentage of cementitious materials and therefore, provides much greater strength. Project specifications required a mortar strength of only 750 psi; the grout had to be capable of supporting loads exerting pressures of up to 3,000 psi.⁵⁹

According to the plans, load-bearing walls in the first four floors had to be grouted throughout with no. 6 rods adding support at wall ends and no. 4 rods, spaced two feet apart, reinforcing the walls' major portions.⁶⁰ Above the fourth floor, the program changed. Grout only had to fill certain blocks, including those that contained reinforcing rods and those at the ends of walls. No. 6 rods were still to be placed at wall ends, but the spacing between the no. 4 rods, was to be increased to four feet.⁶¹ (See Illustration 4)

An Ivany type masonry block, or something similar, was used throughout the project. It is an unusual system since the Ivany blocks that lie end-to-end actually form a cell between them, equal in size to the three cells in each brick (see Illustration 5). The actual points of contact do not have to be mortared or grouted. It is imperative to the strength of the Ivany system, however, that the cell between the blocks be filled with grout. Grout also was to be used to cement blocks laid on top of each other along the horizontal space, i.e., bed joints between them (See Illustration 5).

*Reinforcing rods are graded according to diameter. For example, a no. 3 rod has a diameter of 1/8 inch. Each successive lower numbered grade after no. 8 adds on 1/8 inch to the diameter. Thus, a no. 5 rod has 1/2 inch diameter.

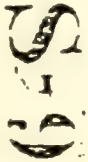


PLAN: 1ST FL. THRU 4TH FL

PLAN: 5TH FL THRU 6TH FL

TYP. BEARING WALL

SCALE: $\frac{3}{8}'' = 1'-0''$

	DWG. NO.	DWG. TITLE
		WALL SECTIONS & DETAILS

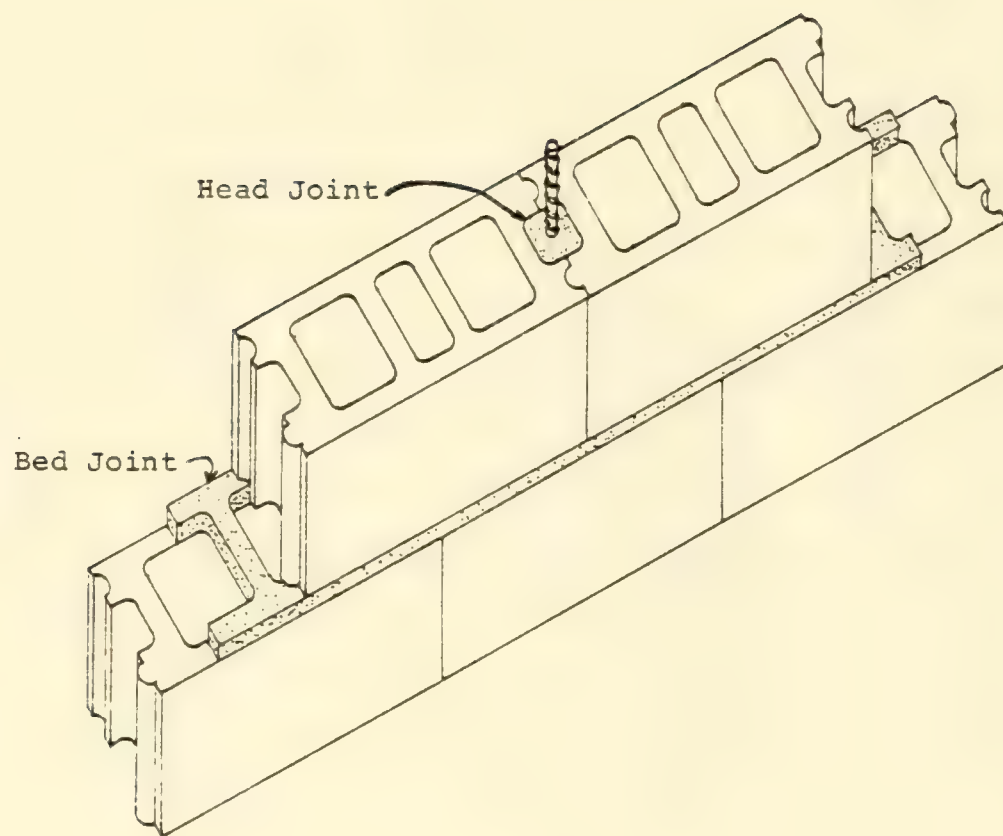


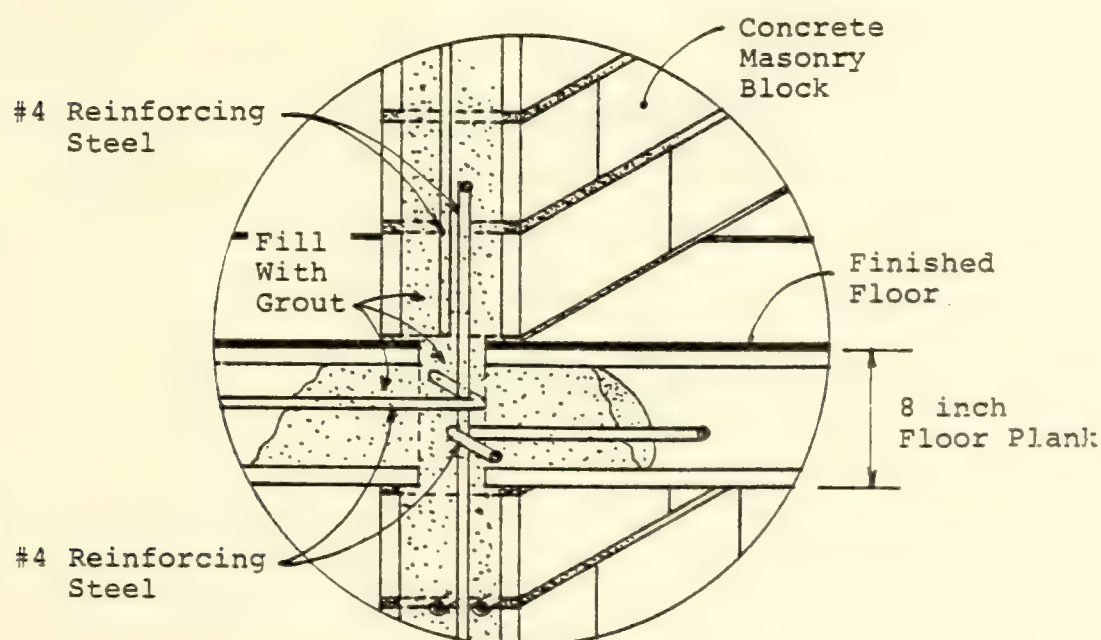
Illustration 5

Except along one line of the building, the general contractor generally followed this plan for the first four floors. Occasionally the crew failed to install one of the no. 6 rods.⁶² Construction of the upper three floors of the McCarthy Apartments, however, fell drastically short of project specifications. Numerous rods are missing. The contractor not only substituted the oversanded mortar for grout, but also often failed to use even the oversanded mortar around reinforcing rods or in block voids. The cells formed between I-vary blocks laying end to end in the top three floors uniformly lack any sort of cementus materials whatsoever.⁶³

In load-bearing masonry construction, reinforcing rods, called shear anchors, tie the floor systems into the wall system. The rods go in along with the concrete floor planking; later, the ends of the planking must be broken open and the shear anchors grouted into the walls and planks (see Illustration 6). Only 3 out of 100 shear anchors that Kenney and Associates examined were properly grouted. In many cases, the anchor could be removed by hand.⁶⁴ The anchor spaces along one building line did not even have the reinforcing rod ready for grouting, leaving a void in the connecting space.⁶⁵ Reinforcing rods are useless unless grouted into the components they are meant to support or connect.

Two building lines warrant separate discussion: Line 5.4, one of the two interior bearing walls running the length of the east wing, and line 4.4, an exterior wall running the length of the same wing. Both lines exhibit their particular deficiency on every floor.

Line 5.4 contains the doorways to the apartments and helps to carry the weight of the concrete floor planks between it and line 4.4. In some places, it supports the floor planks in the core of the building as well.



Illustrat
6

8-25-77

CHRISTOPHER MCCARTHY HOUSING, FOR THE ELDERLY
MELROSE, MA8 1/2" FLANGE 5/8" THICK
5/8" B.P. WELDED

2" JOINT

5" BLOCK

6" BLOCK

8 1/2" FLANGE 5/8" THICK
1/2" B.P. WELDED

10"

12"

4"

DOOR LINTELS ± 1/2"

401

403

405

407

DOOR LINT

2" GAP

10 COURSES @ 8" → 80"
STACK BOND

2 1/2" GAP

2" GAP

10 COURSES @ 8" → 80"
STACK BOND

2" GAP

COLUMN FULLY GROUTED

4TH FLOOR WALL ELEV.

COLUMN NOT GROUTED

J. J. KENNEY & ASSOCIATES

Illustration 7

Specifications for the McCarthy Apartments required that two grouted no. 5 rods flank each door opening on this line. (See Illustration 7 for a depiction of a typical 5.4 line area)

Investigators did not find the no. 5 reinforcing rods in any of the 5.4 line doorway areas tested. In testimony before the Special Commission, Kenney said, "The contractor basically told me that he couldn't fit them in, so he didn't put them in, to put it simply." Frequently those areas also proved to be totally hollow or only partially grouted. Above the fourth floor, the scattered grouting attempts employed only oversanded mortar. Kenney testified that these conditions along the 5.4 line were what caused Simpson, Gumpertz, and Heger, Inc., to recommend that the east wing be shored.⁶⁶

On the 4.4 building line, project plans and specifications called for the 10-inch piers under all windows to be fully grouted and reinforced with four evenly spaced no. 5 rods.⁶⁷ Shear anchors from the floor planks were to be grouted onto reinforcing rods at the base of the piers. The design also depended on a bond beam system, i.e. grouted horizontal reinforcing rods, to tie the piers onto the general structure. On the lower floors, plans required two rods below and one above each window; above the fourth floor, the architect thought one rod below each window was sufficient.

In one of the 4.4 line piers on the fifth floor, investigators cut through the interior finish and concrete block to find only three no. 4 rods, haphazardly placed. In a third floor pier, similar tests located only one vertical reinforcing rod. Typically, the piers lacked a sufficient number of reinforcements, and the ends of the piers lacked grout. Frequently the rods were only partially grouted. Above the fourth floor, oversanded mortar was again used for any grouting purposes. In general, the bond beams were absent. On the fourth floor, Kenney found two bond beam rods below a window, but they had not been grouted.⁶⁸

Fire Protection Systems and Floor Finishes

Leslie Brown, a registered architect employed by CBT as the project architect on the McCarthy Apartments, testified before the Commission about several instances in which materials required by the project plans and specifications were not installed. The electrical subcontractors failed to place conduit around the fire alarm wiring; the fire pump was installed without the valves needed to close it off from the building's water supply; and the flooring subcontractor used inferior quality tile and carpeting.

After a series of false alarms, CBT employees tore back the drywall in many areas to search for the cause. They discovered that only a few feet of all the

circuitry had sheathing.⁶⁹ The alarm manufacturer's instructions underlined, in at least two places, the need for placing the wiring in conduit (Appendix Exhibit 4);⁷⁰ plans for the project explicitly stated that any instructions regarding sheathing should be followed.⁷¹ In discussions with the manufacturer, Brown confirmed that the absent wrapping probably accounted for the alarm problems.⁷² He also estimated the present cost of installing properly shielded fire alarm wiring in the McCarthy Apartments would be between \$80,000 and \$108,000. ⁷³

The fire pump in the project received the approval of the necessary authorities only after installation. It has just four valves and is positioned directly over the water main. Any pump maintenance entails interrupting the entire building's water supply. The fire pump actually specified for the McCarthy Apartments had five valves that could be closed off for maintenance in sets of two. If necessary, the entire pump could have been closed off without disturbing the building's water supply. ⁷⁴

In July 1976, the Melrose Housing Authority received an insurance certificate for carpeting in storage at the supplier's warehouse. Assuming that the carpeting met project specifications, the authority paid the bill. In October of the same year, without the knowledge of the authority, the supplier requested a color change, which the architect approved.⁷⁵ When a housing authority member eventually saw the samples of carpet to be installed, she became suspicious and alerted Nason.⁷⁶

T. Wellington Carpets, the filed sub-bid supplier, sent two types of carpeting for installation that differed substantially from the specifications. One was made of acrylic, rather than the required nylon. It also was a lighter, thinner weave than the type ordered. The second carpeting was of a straight nylon material which had no static control and was also too light.⁷⁷

While walking through a bedroom in the McCarthy Apartments, Brown noticed that some of the tile had cracked and come away from the floor. The tile turned out to be a clearly fraudulent substitute for the type specified. Instead of having a thickness of 3/32 inch, the tile T. Wellington Carpets installed measured less than 1/16 inch. This difference means that the tile will break more easily and wear out much more quickly than the material specified.⁷⁸

CONCLUSION

Both the variety and severity of the problems at the McCarthy Apartments raise the question of how such a building could be built under any system of public construction. In response to the Commission's inquiries, the experts who testified about the McCarthy Apartments identified several contributing factors.

Russell J. Kenney pointed to the total absence of responsible supervision in a system that does not thoroughly examine the qualifications of its contractors and subcontractors:

- Q: ...Having viewed all this testimony about non-performance according to specifications, are you able to make any judgments about what I would simply call as a layman, quality or supervision of the work of this project?
- A: Yes. We do many projects like this. This is basically 65 percent of our business. In order for this to happen you cannot have one person who -- in other words, it just can't be a state inspector who is not qualified, it can't be just the clerk of the works, it can't be a city inspector, architect, contractor. Everybody sort of has to get together to end up with this type of result. In other words, some of the areas are obvious. The contractor stopped receiving grout from a ready-mix firm after the fourth floor. He no longer used the pump to pump the grout into the wall. He now simply threw mortar in. This should be obvious to everybody. He failed to put any reinforcing rods into extremely critical piers. He failed in about 800 areas to break through the slabs and to grout the shear anchors. Some of these are four foot on center. He used the wrong mortar throughout the whole entire job...if any one person basically, religiously performs their duties it cannot happen. It's not a conspiracy, it's a society of people not performing their functions.
- Q: Are you telling us in effect that there is no one individual to whom the responsibility and accountability can be attributed, but it's a whole system with many individuals involved, including the supervisor of the actual construction?
- A: That is correct.
- Q: And the fact that some of the bids are filed sub-bidders, the contractor must take it if he's going to get the award because under the Massachusetts case the lowest bidder who has been found to be qualified, or really a test of qualifications gets the job, he has very little control over that filed sub-bidder who is the lowest?
- A: It's supposed to be the lowest responsible filed sub-bidder. The word responsible is sometimes stretched beyond people's imagination.⁷⁹

In his testimony, Leslie Brown emphasized the inherent difficulties of producing a building when a number of contractors are "thrown together" under the Commonwealth's filed sub-bid laws:

- Q: Just an observation and then a question. If I may go back through the testimony that we have heard today from you and from others, and maybe some in reverse order, we have seen where resilient tile and carpeting have been specified, substitutions have been made that would not comply with the specifications. This work was covered by a filed sub-bid. We saw where sprinklers and fire protection work was not installed in accordance with the plans and specifications. That was covered by a filed sub-bidder. Where fire alarm systems were installed in non-compliance with the plans and specifications. That was covered by a filed sub-bid. The plumbing work was done, drain pipes were installed going uphill, and my comment that this Commission does not have the power to even suggest a repeal of the law of gravity that that work was done certainly in an unworkmanlike manner, that was covered by a separate filed bid. Where the building is suffering from serious structural problems due to masonry contractors' failure to install reinforcing bars, structural grout, that was clearly called for in the plans and specifications. That work was covered by filed sub-bids. Where we experienced roof leaks, where there is a substitution of another roofing system without the concurrence of the Housing Authority. This work was covered under a separate filed sub-bid. I count six filed sub-bidders. Would you comment on how the filed sub-bid law acted in this case to protect

the taxpayer in the Commonwealth and the occupants of this building?

A: I couldn't comment how it acted to protect the Commonwealth. The comment that I would like to make is that if you're going in for open-heart surgery, I don't think you would like to take a bid from various doctors around the country who had never worked together before, and allow them to open your body up and operate on your heart. A building is a technical problem. People who have never worked together before don't have a relationship, understanding the various idiosyncrasies of the other contractors, all of a sudden being thrown together on a job. They haven't developed a relationship which you usually see in the private sector where contractors will work with the same subcontractor, not on every project, but a rhythm of projects, two or three projects together, and maybe work with somebody else and understand that contractor. He knows how he performs, he also can call the guy and say I have a problem, can you get out here today and develop some sort of working relationship. From what I have seen of public construction, this doesn't happen. As a matter of fact, it becomes an adversary role where everybody goes running to their lawyer instead of trying to solve the problem. Until something is done with the filed sub-bids, I think you're going to continue to have problems like that.80

DUXBOROUGH VILLAGE

Introduction

Like many state projects, Duxborough Village was not completed on time. In fact, the contractor at Duxborough never finished the required work and specifically omitted various punch list* items. What makes this project particularly noteworthy, however, is that, in the absence of critical fiscal controls within both the Department of Community Affairs (DCA) and the Duxbury Housing Authority, the general contractor received an overpayment of \$119,025.

Background

On April 17, 1974, the Duxbury Housing Authority (DHA) contracted with the low bidder, Sarno Construction Company of Winchester, to build Duxborough Village, a multi-unit housing project for the elderly and handicapped. The first such project undertaken by the Duxbury Housing Authority, the seven wood-frame residence buildings and one community building were originally to be built for \$1,096,700.** The contract allowed the general contractor one year, beginning May 1, 1974, to complete the project. The DHA, at Sarno's request, later extended the completion deadline to June 15, 1975.

Despite unfinished construction, however, the Duxbury Housing Authority allowed tenants to begin moving in on August 11, 1975. Sarno halted work at that time, even though the project architect, George Phillips of Edward Sears Read and Associates, submitted numerous punch lists to the company. Among the items left undone was various painting, carpentry, electrical and maintenance work on the community building, as well as roof and porch repairs, threshold and door adjustments, the installation of a lawn drain, and additional fencing for the residential units. The contractor also omitted concrete finishing and painting, and neglected to do general cleaning, landscaping, and gas shutoff adjustments.

Although Sarno repeatedly promised to finish the project by November 14, 1975, the company withdrew all its personnel and equipment on November 6 and effectively abandoned the project. On December 29, 1975, the DHA voted to terminate Sarno's contract; in the letter notifying the contractor of this action, the Housing Authority cited the reasons for termination as failing to complete work within the specified time and "failure to make prompt payment to contractors."

On March 22, 1976, the DHA voted to exercise its option to require Sarno's bonding firm, Aetna Casualty and Surety Co., to complete Duxborough Village.

*A punch list is a written statement describing incomplete and unsatisfactory work required under the construction contract. Usually punch lists are drawn up around the time of a building's completion.

**This bid contract price was ultimately reduced to \$1,073,472.97 by twenty-five change orders.

Aetna never acknowledged the authority's written request. Despite the fact that Tom Joy, the DHA's Director of Accounts, issued a certificate of substantial completion on March 31, 1978, the housing authority itself spent nearly \$27,000 to repair and finish the project.

In addition to the punch list items, Duxborough Village has been plagued by various problems resulting from poor design, poor workmanship, and the substitution of inferior materials. For example, the heating and ventilation system of entrance hallways cannot be systematically controlled; security hardware is inadequate in each building; several buildings have no water pipe insulation in the attic; and bleeder valves of baseboard heaters are inaccessible and therefore inoperable. In the buildings for the handicapped, the fabricated metal stairways leading to utility rooms are without railings; the stair treads are also dangerously small.

To determine how the overpayment to the contractor occurred, it is essential to understand the DCA's accounting procedures. The form used to receive contractor payment requests on its projects is known as the "periodic estimate for partial payment." The estimate requires the approval of the contractor, architect, housing authority, clerk of the works, and the DCA senior construction engineer. Once this form has been processed, the DCA's Director of Construction Services signs an approval form which is attached to the estimate and sent to the housing authority for payment. Technically, all those who sign and approve the payment request have verified all the figures.

As with all DCA contracts, Sarno received monthly installments based upon percentage of work completed, plus the dollar value of materials to be purchased. The overpayment occurred because no central fiscal control exists to indicate the total amount paid to date (including retainage). When Sarno submitted the periodic estimates through #7 (October 1-31, 1974), the contractor included the cost of materials already purchased and stored at the site (\$119,025) in its totals. Also, as inventory was used or installed, its value was never deducted from the unused balance of the contract in estimates #8-17 (November 1974-August 1975). In effect, the DCA was approving and paying for building materials that had already been bought and possibly even used.

Aside from Sarno's miscalculations or duplicity, as well as the oversight of the architect, clerk of the works, and project engineer, the overpayment resulted from the DCA's and the DHA's methods of accounting. On individual projects, the DCA only keeps log sheets of payments approved and the dates of approval; no accounting is made for the value of inventory on site minus the amount actually installed. Had the DCA maintained a record of cumulative payments, the increase in amounts over the contract price would easily have been noticed.

Although the project was never completed, Sarno received over 100 percent of the contract price. The retainage \$53,000, or five percent of the contract price withheld to insure future performance and as security for possible construction deficiencies, was deducted from the monthly payments. Even so, Sarno was paid \$1,132,235, over \$58,000 more than the contract price.

Overall, too much money was paid out without any strict thorough accounting of where it was going. From officials at the DCA and DHA to the project engineer and clerk of the works, no one took the time to inspect accurately the inventory on site or the details of the periodic estimates.

While Sarno acknowledged the overpayment on October 20, 1975, the company has failed to return the money.

The total losses incurred by DHA resulting from Sarno's failure to fulfill its contract obligations include the following:

- "punch lists" items	\$20,790
- value of replacing and repairing materials and correcting work	\$ 6,856
- value of labor and materials paid but not rec'd by DHA	\$ 2,285
- loss of rents 6-15-75/8-11-75	\$ 5,301
- Addit'l archit. fees and clerk of works compensation after 6-15	\$ 5,740
- subcontractors' legal expenses	\$ 850
- overpayment to genr'l contractor	<u>\$119,025</u>
 Total losses	 \$160,847

In view of the losses by the DHA, the failure of Aetna to fulfill its obligations, and most notably, the failure of Sarno Construction Company to complete Duxborough Village, the DHA has brought a suit for damages against Sarno and Aetna.

Introduction

Randolph housing for the elderly is a relatively small project, standing only four stories high and budgeted at under \$2.5 million. Tenants occupied the building a month before schedule and construction costs were within four percent of initial contract prices.* Questionable changes and procedures marked the construction process, which was also interrupted by a four-month work stoppage. Most importantly, the structural system was significantly changed well after construction began, and the resulting major redesign responsibilities were placed in the hands of the general contractor.

Presently, the building has serious defects. Among them is a ventilation system that provides only minimal air circulation. The structure leaks profusely, a problem largely due to inadequate design.

Construction process

The Randolph Housing Authority (RHA) originally contracted with William Nelson Jacobs Associates, Inc. for architectural services for the housing for the elderly project to be located on Decelle Drive. After the groundbreaking ceremony on October 10, 1973, the Farwell Construction Corp. began work almost immediately.¹ Although Farwell seemed to be in a hurry to construct the building, (appendix exhibit 1)² the company was in no rush to submit shop drawings showing methods of construction and allowing for monitoring of the ongoing work. Edward Ross of Jacobs Associates wrote no fewer than five letters during October and November pleading for shop drawings.³ At points he was reduced to approving the work on the basis of discussions with representatives of Farwell.⁴ On November 21, he wrote, "the number of [documents] in relation to concrete and masonry work which are needed in the work at this time by you and your subcontractors are too numerous to name"(appendix exhibit 2).⁵

Jacobs Associates Inc. was experiencing its own problems at the time. Its management became increasingly disorganized, and eventually the firm went bankrupt.⁶ The Randolph Housing Authority thus found itself needing another architect. On December 21, 1973, when the Housing Authority voted to terminate Jacobs,⁷ it had already paid the firm \$80,000 of the \$100,000 allocated for architectural fees on the project.⁸ This left only \$20,000 to offer Jacobs' successor.

*The original contract price was \$2,337,000.00. Periodical Estimate No. 27, the last in the Department of Community Affairs files, covers the period from November 1, 1976 to July 31, 1977, and lists the adjusted contract amount to date at \$2,415,915.19. This project was to have been completed by October 15, 1975. It opened for occupancy in early September of that year.

On that same date, however, the RHA also voted to hire Michael O'Shea as interim architect.⁹ O'Shea was placed on the Housing Authority's payroll in the first week of January 1974.¹⁰ Because this project was O'Shea's first major architectural job,¹¹ he was willing to work at a relatively low fee. As a former Jacobs employee, he also had some familiarity with the project. The Authority later appointed him architect for the project's duration.¹²

Although the termination of Jacobs and the hiring of O'Shea happened simultaneously, the project did not have continuity of architectural supervision. Jacobs Associates had increasingly failed to fulfill its contractual responsibilities as time wore on¹³; therefore, the project had lacked construction administration by a designer on behalf of the client for some weeks before December 21. During that time, the general contractor initiated a major change in the building's structural design.

In a letter dated December 12, 1973, Michael Antell, Farwell's construction manager for the project, wrote to Jacobs stating that construction had not been given priority in fuel distribution during the energy shortage. He felt that Farwell would have to curtail operations once temperatures neared the freezing point.¹⁴ The construction of the poured-in-place concrete flooring system originally designed for the building would have required heating the forms and the concrete itself in order to produce the chemical bonding in the cold. In his letter, Antell then made a request:

Our exhaustive research has uncovered what we believe the only possible method in which we may continue construction operations through the winter season--precast concrete slabs.

Further investigation revealed that although the initial cost of precast would be more costly than cast-in-place concrete, because of the cost of winter heating of cast-in-place concrete and the overall time saving factor of precast, that we could develop a break-even situation. By applying those costs to purchasing the precast it became apparent that curtailment of construction operations would cause a minimum of a three (3) month delay to the project (a situation which is beyond our control) and that precast could reduce construction time by a minimum of three (3) months thereby resulting in a six (6) month reduction in construction operations. By reducing the time span of construction operations all concerned will benefit.

Also, another problem has appeared on the horizon--reinforcing steel. We are informed of the possible unavailability of same which may cause delays to this project before completion of cast-in-place slabs.

With all of the problems with energy, fuel, unavailability of reinforcing steel, all of which spell delays and additional monetary consideration for all concerned, we respectfully request that we be allowed to use precast in lieu of cast-in-place concrete slabs on this project at no change in the contract amount and a decrease of 90 days in contract time. Also, we will assume the cost of any structural re-design necessary.¹⁵

Notes from a job meeting on January 4, 1974 mention that the general contractor's structural engineer, James Barry, had begun the necessary structural redesign.

On January 5, 1974, the RHA voted to conditionally approve the request.¹⁶

It is highly unusual for a contractor to take over major design responsibilities. To a certain extent, it removes control over the project from the architect, and therefore from the client the architect represents. The RHA not only accepted Antell's structural design offer, but also required that the contractor be responsible for almost all other related redesign as a precondition to the passing of the relevant change order (appendix exhibit 3).¹⁷

Substituting a precast concrete flooring system for a poured-in-place one entails major changes: total redesign of the entire structural system; new electrical, plumbing, and HVAC drawings; and related alterations of architectural drawings. All of these duties, except the plumbing and HVAC redesigns, were explicitly placed in the hands of the general contractor.

By the time O'Shea assumed the position of architect on the project in early January, the changes were well underway even though Farwell had not supplied plans, specifications or shop drawings.¹⁸ After considerable discussion, it was agreed that Farwell could meet some of its redesign obligations by constructing a model apartment detailing certain architectural and electrical modifications accompanying the floor system change.¹⁹ The model apartment did not, however, release the contractor from supplying other documents supporting the change such as the plans required by the Department of Public Safety. Again the project architect had to press the general contractor for shop drawings;²⁰ in March, O'Shea backed his requests by threatening a work stoppage.²¹ Nevertheless, the plans for electrical, mechanical, and other related changes were not forthcoming.

Work had already ceased on the site as a result of a building inspector's order, written on February 28, 1974 (appendix exhibit 4),²² because of the cracking of structural piers on the building's arcade. The inspector's order noted the absence of drawings supporting the flooring change. Although Farwell submitted plans detailing only the new concrete floor system,²³ the building inspector withdrew his cease and desist order on March 14.²⁴ On March 16, 1974, O'Shea wrote Farwell, placed his own stop order in effect, and demanded that the contractor provide the plans for the accompanying changes (appendix exhibit 5).²⁵

Farwell did not comply. The company had already dispersed its crews in response to the building inspector's stop-work order.²⁶ The senior project engineer for Farwell, Robert H. White, wrote to O'Shea asserting that the firm had been prevented from completing the model apartment through no fault of its own and was "thoroughly confused" over the reasons for additional documentation requests.²⁷ O'Shea responded immediately with a letter stating that the

contractor had obligations beyond the model apartment.²⁸ When the work stoppage continued into April, O'Shea again wrote Farwell:

After considerable discussion during the intervening months [since January], we still do not have your architectural and electrical submittal complete and ready for review. The lack of these submissions has become the basic cause for delay on the project by forcing us to stop work on the affected architectural and electrical items until your submission is received, reviewed, approved and filed at Public Safety.²⁹

Farwell's financial instability may very well have contributed to the length of the work stoppage.³⁰ Indeed, before the project was completed, Joseph Bennett Company of Needham had purchased Farwell in its entirety.³¹

An entry in a standard record file of its creditors kept by the First National Bank, dated January 14, 1974, reads, "Kavanaugh feels they can pull out of their difficulties in a period of 18 to 24 months. Their hope for this lies from possible source of funds beyond those contained in cash projections. The first is an estimated savings of \$200/250,000 on Randolph job by reason of an approved change without price adjustment from concrete floors to precast concrete."³² RHA Director Joseph Welch said in an interview, however, that Farwell's presentation of the change to the Housing Authority did not ever include any expectations of a saving.³³ The relevant change order does not, in fact, alter the original contract price.³⁴

When work resumed in the second week of July, Farwell demanded the passage of certain change orders as a precondition to returning to the site.³⁵ One change order addressed the increase in masons' wages that had occurred during the shutdown. O'Shea balked. Had work continued earlier, he felt, the increase would not have affected the job. Although he signed the change order to expedite the project, he reserved the right to hold the \$9,936 involved as the basis for a later suit.³⁶ Plans detailing changes accompanying the floor system substitution were not filed until much later. Change order No. 22 finally signaled DCA and RHA review and approval of the substantial electrical, mechanical, and architectural modifications. The first signature bears the date August 20, 1975 (appendix exhibit 6);³⁷ the project was completed in the following month of that year.

Current Problems

This section analyzes the building's two major continuing problems: leakage and inadequate ventilation. In combination these defects have led to severe difficulties with mildew throughout much of the housing project. Evident even before the building was accepted, the moisture problems have proved so persistent and extensive that the RHA hired a firm to make a preliminary investigation four years after the project's completion. The RHA has already repaired the community building roof and currently is discussing with the DCA the possibility of obtaining funding for further repairs.³⁸



Mildew in Randolph Housing for the Elderly.

Leakage

Leakage problems in the Randolph housing for the elderly have been extensive. A list of storm water leaks, compiled on April 13, 1975 under O'Shea's direction, noted moisture penetration in nearly 40 percent of the 124 units, in addition to stairwell and community area leaks.³⁹ Despite remedial efforts, leakage continued. Hired in July 1979 to investigate moisture penetration in the project, Kenneth F. Perry and Associates, Inc. found the situation largely unimproved since April 1975. In addition, in the interim the kitchen and men's toilet in the community building had sustained severe water damage. Although recently scrubbed, the two leaking stairwells had developed substantial mildew growth. Apartments in the northeast corner of one of the wings still leaked, some along the floor line; in the hallways and elevator lobbies moisture had stained the walls, especially near the windows.⁴⁰

The building's original design created the potential for moisture penetration without providing compensatory protection. The exterior brick facing butts directly against the load-bearing masonry block, rather than having the normal cavity between the brick and block, or a waterproof barrier between the two. O'Shea claims the brick facing on the building also plays a load-bearing role and the butting of brick and block is integral to the building's strength.⁴¹ In keeping with this perspective, when the Housing Authority wanted the brick work on the site replaced, Farwell warned that the piers would crack without the brick work.⁴² The contractor maintained that the brick was structurally important in the building as a whole.⁴³

Examination of the building's original plans, however, does not reveal any vital structural role for the brick. By its placement, it buttresses the block walls against any buckling tendencies, but this is probably unnecessary.⁴⁴ The later revisions in the building's plans should not have changed this.⁴⁵ Although some arcade piers did indeed crack, they were not filled with structural grout and reinforcing as required.⁴⁶

Regardless of the rationale for the design, abutting masonry will transmit moisture by capillary action unless interfaced with a damp-proofing substance. Even with this precaution, though, a small cavity is ordinarily left to allow moisture deflected before the block to drain off; it may otherwise remain in the brick and, with seasonal variations in temperature, cause cracking. The plans specified that a layer of parging - mortar troweled over a surface - separate the brick and block. Requirements for water-resistant components in the parging were, however, absent. Since it is only a thin layer of cement,⁴⁷ the parging on the Randolph housing could easily transmit moisture.

Other major elements in the building's moisture protection system were affected by change order 19, processed in March/April 1975. It provides first for the application of two coats of silicone over the exterior brick at a cost of \$17,500. A silicone coating, however, usually provides a viable water-protective seal for only two to four years, after which it breaks down. The elements erode the silicone, and movements in the building or changes in its components (e.g., brick) tear the seal. A new coat must then be applied. The change order also allows the deletion of flashing at 80 windows, as well as the deletion of the procedure of turning up through-wall fabric flashing at the interior walls. At the time, the savings to the Authority from these items were \$6,000 and \$2,000, respectively. Additional caulking was substituted for the window flashing for a fee of \$500 (Appendix exhibit 7).⁴⁸

The effectiveness of the through-wall flashing in the Randolph housing for the elderly is questionable. Normally, through-wall flashing serves to carry away water caught in a cavity between the brick and masonry block. Interior flashing is ordinarily made from sheet PVC (polyvinyl chloride) or, as in this case, fabric installed to slope towards a structure's exterior facing. Water seeping through the brick will thus drip down the cavity and be caught by the flashing, which will redirect the moisture through small openings, called weep-holes, in the exterior brick. No cavity exists for the moisture to drip down, however, and the water is not necessarily deflected at the block. Should water actually reach the flashing, there is no open space through which it can easily move because the flashing is squeezed between the layers of bricks and blocks. Also, since the flashing is not turned up at the interior walls, water moving gradually along the level fabric can actually travel into the apartments.

It is not surprising that the building's waterproofing system has proved totally inadequate, given the tremendous reliance on silicone and caulking to seal the walls. Other details actually brought in moisture. In 1978, the contractor wrote O'Shea saying that the roof vents admitted so much snow that it had to be shoveled out. He also mentioned that the airconditioning sleeves permitted water to enter the building.⁴⁹

Ventilation

United Mechanical was the filed sub-bidder for the ventilation on this project. Initial plans for the building reveal the inadequacy of the system. It only allows air to enter the apartments through open windows and doors. Removal of air from the apartments depends solely upon small bathroom fans that operate only when the room light has been turned on.⁵⁰ As a result, air in the apartments is almost totally stagnant.

The extremity of the ventilation problem caused the white curtains in the rooms of smokers to turn brown. Special Commission investigators, entering a room recently occupied by a smoker, noted that the outlines of the furniture were clearly visible on the walls.⁵¹ The pieces of furniture had prevented trapped smoke from staining the areas behind them as it had the open wall surfaces.

Conclusion

Needing money, the general contractor for the Randolph housing for the elderly project attempted to finish construction unusually quickly, originally proposing completion 11 months earlier than the contract date (Appendix exhibit 8).⁵² Construction often proceeded without shop drawings and therefore without effective monitoring by the Housing Authority's representative. When a major impediment to quick completion arose, the contractor proposed, in effect, to redesign the building. ~

Shifting major design responsibilities to the general contractor represents an abdication of control on the part of both the designer and the client. The extensive redesign meant that the building on which competitive bids were taken was not that which was actually constructed. In addition, the difference between the two was determined by the general contractor.

Finally, the original design, created and approved within the ordinary system of safeguards, produced a building with serious problems not easily remedied.

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Final Report
To The General Court
Of The Special Commission
Concerning State And County Buildings

December 31, 1980

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THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS

VOLUME 7

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THE SYSTEM OF PUBLIC CONSTRUCTION IN MASSACHUSETTS: AN ANALYSIS OF AREAS OF
CORRUPTION AND MALADMINISTRATION, WITH RECOMMENDATIONS FOR IMPROVEMENT.

INTRODUCTION

"...external walls falling down, heating systems that don't heat, structural defects that threaten safety, playing fields that don't drain,...external walls and roofs that have such enormous cracks in them that it makes energy conservation impossible, buildings that are potential firetraps, electrical systems that fail, roofs that continually leak....Our Investigation shows that the state and county system of public buildings produces such buildings as a rule and not the exception."

Professor John Woollett¹

"It's not a conspiracy, it's a society of people not performing their function."

Russell J. Kenney²

"There is an old country saying, 'If it ain't busted, don't fix it.' Now, some will argue against the breadth of our proposals by saying they are too sweeping and suggest, instead, that we improve here and there what we now do. But it is not that the system is 'busted.' There is no system at all."

John William Ward³

The General Court mandated the Special Commission to "investigate and study as a basis for legislative action ... the existence of conditions which tend or may tend to permit the occurrence of [corrupt] practices and maladministration; and the limitations on the powers and functions of those charged with the duty of approving, supervising or overseeing [construction related] contracts or the enforcement of laws related thereto."⁴ The Commission has actively fulfilled this mandate. The Commission recommended to the legislature a wholesale revision of the way the state and counties plan, budget, design, construct and maintain public buildings, and in the way the state prevents and detects fraud, corruption and mismanagement in the purchase or sale of goods and services. The Commission further advised the General Court that the funding of election campaigns for state office holders has to be set on a new footing if repetition of past scandals is to be avoided.

The Legislature and Governor responded by enacting and signing into law most of the reforms recommended by the Commission:

- A new designer selection procedure was established;
- The management of construction contracts was overhauled;
- A mechanism was put in place to set standards for the performance of general contractors;

- Antiquated and fragmented real property management procedures were consolidated and modernized;
- Budget and planning processes capable of offering useful information and analysis to executive and legislative decision makers are for the first time required on capital outlay budgets;
- The organizational structure performing the commonwealth's building functions was redesigned to clarify responsibility and allow accountability;
- An Inspector General's Office was established to examine the commonwealth's procurement system in several areas of procurement in addition to construction and to continue the Commission's work by investigating for fraud, corruption or abuses of authority in these areas.

This action stands as a tribute to the people and institutions that govern the Commonwealth. A problem was recognized and the Commonwealth responded. Painful as it was to know the truth, the legislature created the method and means to do so. With the far-sightedness to understand that recriminations about the past can have only a negative effect on the future, the General Court sought a new beginning. That search was central to the legislature's purpose in creating the Commission. The legislature's commitment to a new beginning was carried through in the speed and breadth of their actions, unprecedented on any matter as emotion laden and complex.

The major accomplishment represented by the new or revised laws is tarnished, however. Three fundamental flaws revealed by the Commission remain. First, the causes of corruption in the funding of election campaigns have not been touched. Second, the failure to repeal the filed sub-bid statute virtually guarantees a future of defective construction on public buildings. Third, the potential effectiveness of the new Inspector General's Office was diminished by legislative amendments reducing the Inspector General's powers while needlessly increasing the political controls on that office.

The source of campaign contributions for elected officials is the foundation of the integrity of our government. The clear common sense of this proposition places campaign finance reform at the center of any effort to improve integrity in Government. Contributions from individuals and associations of individuals oblige the recipient of such contributions at minimum to offer special access and a friendly attitude toward the contributors. People with a financial stake in government decisions - whether legislative, regulatory, or contractual - know how much elected officials need money to conduct a campaign and many contribute money for the sole purpose of creating obligations on the part of those they support.

The Commission's study of one kind of government procurement presents conclusive evidence of two points: one, elected and appointed officials must have discretionary power if government operations are to be effective and two, officials abuse such discretion in favor of contributors. Thus, this Commission sees little cause for optimism concerning the future integrity of government in the Commonwealth until election campaigns are publicly financed.

The Legislature's failure to repeal the cumbersome statutory regulations which dictate how sub-contracts are awarded on public building projects retains one of the primary causes of defective construction on public buildings in Massachusetts. The sub-contractor selection law, known as filed sub-bidding, is a failure by every reasonable measure of a sub-contractor selection system. Filed sub-bidding is a classic and disastrous example of government being manipulated to over-regulate the private sector to the exclusive financial gain of a few. It is the position of the Commission that the Legislature should deregulate sub-contract bidding and allow the same freedom of choice between contractors and subcontractors that is normal procedure in the private sector. Direct selection of sub-contractors will result in better buildings, lower cost, and greater integrity in the public bidding procedure.

The structure and powers of the Office of Inspector General were carefully crafted by this Commission to create an apolitical, professional investigative body to support effective prosecution of fraud and corruption by all the forces at the public's disposal. The Legislature, nevertheless exempted itself from investigation by the new office, injected political partisanship into the office's controlling Inspector General Council, and denied duly authorized public prosecutors access to the Inspector General's investigative findings. The taxpayers of the Commonwealth should find these dilutions and restrictions unacceptable.

The legislation supported by this Commission established an Inspector General's Council to oversee operations and policy of that office and would have created a nonpartisan group representing both legislative and executive interests. The legislation was amended in the Senate to specify party affiliation of certain members of the Council and to expand its membership, thereby decreasing the possibility of confidentiality in its deliberations. Two substantial policy changes in the legislation were made by the Senate counsel's office: first, the Inspector General was forbidden to refer the results of investigations to the United State Attorney, even if violations of federal law were indicated; second, the Inspector General was forbidden access to legislative records. These changes substantially undermine the potential usefulness of the Inspector General to save the taxpayers' money and to prevent and detect corruption in the governing of the Commonwealth.

DESCRIPTION OF THE SECTIONS WHICH FOLLOW

This section is a reconstruction of the public building system: the way it functioned and the way it malfunctioned, producing waste, abuse of the public trust and treasury, and faulty buildings. This section seeks to provide an understanding of the urgency of comprehensive change of this system, as well as an understanding of the specific changes recommended by the Commission. The reader will be able to understand what these changes can accomplish and where the efforts of the Commonwealth's citizens and elected officials must continue to be vigilant or seek further change.

The organization of this section can be thought of having three parts. The first part gives the setting and context of the Massachusetts building system and organization of government. The first section in this part, "Scope and Nature of Capital Investments," describes the magnitude of public construction undertaken during the period examined by the Commission (January 1, 1968 to December 31, 1980) and the anticipated building program in the future. The next section, "Formal Organization and Processes," describes (in a chart) the important institutional actors in the system and then gives an overview of the management of building projects by several state agencies, including the Bureau of Building Construction. The legal or "formal" relationship which the Bureau of Building Construction had with other agencies during the period studied is particularly noted.

The second grouping of sections is the main body of information about the building system. These sections are organized to correspond to consecutive steps in the state and county building process, from the first articulation of need for a particular project, through budgeting, design and construction, and down to the maintenance of the Commonwealth's public building stock. (The Table of Contents above gives the titles and order of all sections.) Each of these sections treats a separate stage of the building process in three ways. First, the legal and administrative requirements that were supposed to govern the stage under discussion are presented. Referred to as the "formal system" of each stage, these presentations are in the past tense to clarify that these laws and procedures were in existence during the time of the Commission's inquiry. In many cases, new laws reflecting this Commission's work are already on the books, to go into effect July 1, 1981. These formal descriptions are not necessarily the realities of the process. It is the second part of the description of a stage in the process that details the way things actually happened. The instances of fraud, corruption, maladministration, incompetence and waste which are described in detail in other chapters of this Report are brought together

here to show the patterns of which they are a part. The examples and patterns show how and why such abuses and failures occurred. The final part of each of these sections then gives the changes or "solutions" which the Commission recommends to address the problems described. As noted above, most of these recommendations have been adopted.

Finally, the "Recommended Budget" is a fiscal summary of the analytic sections which precede it. It states the amount the taxpayers of Massachusetts should appropriate to fund the specific recommendations in this Report.

THE SCOPE AND NATURE OF THE COMMONWEALTH'S CAPITAL INVESTMENT PROGRAM

THE COMMONWEALTH'S CAPITAL INVESTMENT PROGRAM IN THE PAST

The significant stake that the citizens of the Commonwealth have in an efficient, effective, and accountable system of public construction can be illustrated throughout review of the magnitude of the programs with which we are dealing. These are summarized in Table 1. The scope of the building program mandated for line state agencies during the period studied by the Commission was substantial. As Table 1 shows, over \$1.593 billion was authorized for fiscal years 1969 through 1981 inclusive for such projects. This is an average of \$122.50 million in new authorizations for building construction each year. Of the total, approximately \$142.5 million, or about 9% of such authorizations, were made outside of the main capital outlay bills.

The state has a distinctive role to play vis-a-vis county projects. Not only must these be authorized by the state legislature and the governor, but once authorized they are subject (since 1972) to the supervision and control of the Bureau of Building Construction (BBC) (except for some minor exceptions). This is true even though the inhabitants of the county must pay off the bonds issued by the county to finance the project. Thus, during the period of fiscal year 1969 through 1971, a building program of more than \$134.3 million was mandated for counties. This is an average of approximately \$10.3 million per year.

Altogether the building program authorized for line state agencies and counties during that period was \$1.727 billion; this represented an average of more than \$132.8 million per year in authorizations.

This however does not exhaust the capital program of the Commonwealth, which includes investments in more than buildings alone. Public works items for the period in question which appeared in the main capital outlay bill as approved represented about \$199.6 million in authorizations. (A significant amount in authorizations appears in capital outlay bills other than the the main one; for example, for highways, and is not included in this number. See the discussion below.) Thus the total authorizations for line state agencies (subject to the above proviso) for the period in question were \$1.793 billion, corresponding to an average of \$137.9 million per year. If county authorizations are included, the figures are \$1.927 billion and \$148.2 million, respectively.

Distribution Among State Agencies

Distribution Among State Agencies

By far the largest authorizations were given to projects within the purview of the then Executive Office of Educational Affairs (abolished by legislation in 1980) which received \$770.6 million, or about \$59.3 million per year. Included within that total were \$152.8 million for the Columbia Point Campus of the University of Massachusetts, Boston; \$92.4 million for the University of Massachusetts Medical School in Worcester; and \$73.6 million for the University of Massachusetts, Amherst. These are the three largest groups of authorizations for particular facilities except for the Executive Office of Transportation and Construction Building in Park Square, currently under construction, with authorizations currently at \$83.6 million. In real dollar terms, of course, it is dwarfed by the university projects.

The community college system (soon to comprise sixteen members) was the recipient of about \$261.6 million in authorizations during this period. The ten member state college system garnered approximately \$126.9 million. The University of Lowell and Southeastern Massachusetts University followed with \$31.4 and \$23.0 million, respectively. Since the various higher education sectors experienced different paces of construction, the figures for fiscal 1969-1981 do not necessarily reflect their relative total capital expenditures.

The second largest agency recipient of building authorizations was the Executive Office of Human Services, with \$361.3 million during this period. The largest portion went to the Department of Mental Health with \$221.7 million followed by the Department of Corrections with \$89.7 million and the Department of Public Health with \$30.7 million. In most cases the aggregate amounts going to particular facilities were considerably smaller than those going to educational institutions. MCI Bridgewater, with \$35.4 million resulting from 16 different appropriations and MCI Concord with \$17.4 million from 11 different appropriations were the largest recipients.

The pattern of smaller cumulative appropriations for particular facilities is reflected throughout the rest of the state agencies. Thus, for the next largest agency recipient of funds, the Executive Office of Environmental Affairs, the \$119.8 in authorizations (\$60.4 million for Metropolitan District Commission (MDC); \$46.7 million for Division of Environmental Management (DEM); \$12.0 million for Division of Environmental Quality Engineering (DEQE); and \$0.7 million for the Department of Fisheries and Wildlife) were spread over 77 different authorizations.

There are only a few other very large items in the total. During this time period an additional approximately \$37.5 million was provided to the Government Center Commission to continue its work. Other sums were provided to the BBC to

complete that work and to the Bureau of State Buildings (BSB) to make certain changes and repairs in those buildings. The only other large item has not yet been constructed, the current \$19.6 million State Archives Building at Columbia Point.

Distribution Among Counties

The total amount of county authorizations during the period from 1969-1981 was \$134.3 million. Of this total, approximately \$81.1 million was authorized for fiscal years 1973 through 1981; beginning approximately in fiscal year 1973 county projects became subject to the jurisdiction of the BBC.

The authorizations ranged from \$27.3 million (for nine items) to Hampden County and \$21.5 million (for nine items) to Middlesex County, to \$1.6 million (for three items) to Berkshire County and none to Dukes and Nantucket counties. In some instances, such as the Middlesex County Courthouse, the post-1969 fiscal year authorizations represented additions to substantial authorizations prior to that fiscal year.

By far the most money was authorized for the construction of new courthouses. The second largest sum was for renovations and additions to existing courthouses. The two other significant classes of projects involved jails and houses of correction and agricultural schools; small amounts were authorized for recreational facilities, hospitals, county office buildings, and police and fire facilities.

Building Authorities

Specific higher education building authority projects are nominally not authorized by the normal capital outlay process. Each authority is given by statute, a specific maximum authority to issue its own bonds; the decision to proceed on a particular project is made by the Authority in conjunction with the associated institution. However, if the Authority has issued bonds to the maximum and seeks additional projects, further authorizations are required.

From January 1, 1968 to the present, the bonding capacity of the various authorities was increased by a total of \$65.0 million (from \$125.0 million to \$185.0 million). The largest increase was \$40.0 million for the Massachusetts State College Building Authority. An additional \$20.0 million was provided to the University of Massachusetts Building Authority and \$5.0 million to the University of Lowell Building Authority. There was no change for the Southeastern Massachusetts Building Authority.

During the fiscal years 1969-1981, the Division of School Facilities has received \$992.8 million in appropriations toward the construction of local school facilities. There has been a steady increase from fiscal year 1969 (\$30.0 million) to fiscal year 1981 (\$113.1), though the amount of increase has diminished during the past few years. The key to future expenditures is tied to the amount of contributions for first annual payments. (See the discussion in Section 2 on Organization of Project Planning and Management). For fiscal year 1981, the Division was permitted to authorize first annual payments totalling \$6.0 million and was appropriated \$2.5 million for actual payments during that period. This represents a decline from the peak of \$7.0 million in first annual payments for fiscal year 1978. In addition, for fiscal year 1981, \$109.7 million in other annual payments were provided for.

The first annual payments and other annual payments represent part of a long-term commitment to a locality on the part of the Division. According to the Division, as of August 18, 1980, \$1,090.1 million remained to be paid out on long-term commitments made up to that point.

The Department of Community Affairs

During the period in question the Department of Community Affairs has administered a range of programs, some of which antedated 1968. These have included veteran's and relocation housing, elderly housing, housing for the handicapped, modernization grants, urban renewal programs and most recently a neighborhood housing services program. The total amount of authorizations for grants by the Commonwealth totalled approximately \$923.0 million.

Other Agencies

Included in Table 1 are other authorizations or appropriations by agencies other than those just discussed. Substantial sums of money were authorized by the legislature in bills which were not part of the main capital outlay. These were primarily for projects administered by the Executive Office of Environmental affairs and by the Department of Public Works. These bills typically authorize the issuance of bonds by the Commonwealth to raise money for classes of projects with the expectation that a substantial portion will be reimbursed to the Commonwealth in the form of federal grants. The MBTA authorization is also part of a separate bill which in part involves a raising of the dollar limit up to which the MBTA may issue its bonds with some specifications of what the proceeds may be used for. These MBTA bonds are a contingent debt of the Commonwealth. The Commonwealth is also responsible for paying for a substantial fraction of the debt service on those bonds. The authorization also provides for expenditures if matching federal funds, usually substantial, are available.

The authorizations for off-street parking facilities and for convention halls and civic center, provided for in 1980, are administered directly by the Executive Office of Administration and Finance, and the monies are derived from bonds issued by the Commonwealth.

The Government Land Bank authorization was based on statute providing for issuance of bonds by the Commonwealth.

Although their powers are ultimately regulated by the statutes creating them, agencies such as the Massachusetts Port Authority, the Massachusetts Turnpike Authority, the Massachusetts Housing Finance Agency, and the Massachusetts Health and Educational Facilities Authority, as well as the Higher Education Building Authorities issue their own bonds. However, in certain instances in the past, namely ones involving the Building Authorities and MHFA, the Commonwealth has stepped in to provide some form of guarantee to assure the fiscal integrity of those agencies. Presumably this could be true of the same and other agencies in the future.

Table 1.
Summary of Funds Authorized or Appropriated for
Capital Investment by Public Agencies,
January 1, 1968 - December 31, 1980*

	<u>In Millions of Dollars</u>
1. Authorization for Buildings for Line State Agencies.....	1,593.0
2. Authorization for County Facilities.....	134.3
3. Authorizations for Public Works for Line State Agencies (Main Capital Outlay Bills Only).....	199.6
4. Increases in Authorizations for Higher Education Building Authorities.....	65.0
5. Appropriations for Payments Toward Construction Grants by Division of School Facilities.....	1,056.9
6. Long-Term Commitments for Payments Toward Construction Grants by Division of School Facilities.....	1,090.1
7. Authorizations for Department of Community Affairs - Housing Authority Programs.....	923.0
8. Authorizations for Public Works (Non-Main Capital Outlay Bill, Primarily Executive Office of Environmental Affairs, Department of Public Works.....	2,756.6*
9. Investments in Facilities by the Massachusetts Port Authority.....	372.2
10. Authorizations by Massachusetts Turnpike Authority.....	15.0
11. Authorizations for Government Land Bank.....	39.8

12. Authorizations for Off-Street Parking Facilities Program.....	12.5
13. Authorizations for Convention Hall and Civic Center Program.....	30.0
14. Authorizations for Massachusetts Housing Finance Agency.....	1,500.0
15. Authorizations by Massachusetts Health and Educational Facilities Authority.....	434.75
16. MBTA Authorization.....	1,795.0**
	<u>12,017.8 TOTAL</u>

**Includes an estimated \$1201.0 million in federal funding
***Includes an estimated \$1,436.0 million in federal funding.

Source: Commission Review of the Acts and Resolves of the Commonwealth, reports by the State Auditor, annual reports by the Massachusetts Port Authority and information supplied by the Division of School Facilities.

*This is the period within the Commission's purview. It is not identical to the state's fiscal years, but covers approximately fiscal years 1969-1981.

FUTURE BUILDING PROGRAMS

The urgency for reform of the public construction process stems as much from the vision of future expenditures as from the experiences of the recent past. There is a common belief that the era of large capital outlay for state agency projects is past and it is perhaps necessary to dismantle or reduce the structure for administering such programs. The facts suggest the contrary.

In his fiscal year 1981 budget proposal, the governor recommended a total of \$633.3 million for capital outlay projects. While the recommendations by the Secretaries were identical, the requests by the agencies totalled \$722.3 million. Whereas the governor's figure for "urgent" items was only \$118.7 million, the sum requested by the agencies was \$368.3 million. Thus, all participants envision a substantial capital investment program at least in the long run.

The final figure appearing in the main capital outlay bill for fiscal year 1981 was \$184.5 million; if capital outlay items in other authorization bills for FY 81 (for buildings only) are included, the sum is \$236.0 million. The average figure for the past three fiscal years (1979, 1980, and 1981) was \$222.8 million. The average for fiscal years 1969 through 1978, inclusive, was \$123.2 million. In other words, with inflation taken into account, even the present limited funding of capital projects is comparable to the average funding for the period studied by the Commission.

In addition to the increases in the most recent capital outlay for line state agencies there were other projects authorized this fiscal year. Chapter 490 of the Acts of 1980 authorized an additional \$67.0 million for elderly housing, \$90.0 million for modernization programs, and \$1.5 million for a new neighborhood

housing services program. Another new urban-related program involved grants to cities and towns for the construction of off-street parking facilities, which totalled \$12.5 million, and one for the construction of convention centers, which amounted to \$30.0 million.

Also, another \$6.0 million in commitments for first annual payments by the Division of School Facilities were approved. Considering the long-term nature of the state commitment, this means over a hundred million dollars in the long run.

In addition to the recent authorizations there is a substantial sum of unissued bonds and notes for projects previously authorized. As of June 30, 1979 the Comptroller reported a total of \$1,310 million in unissued bonds and notes¹. This included \$930.6 million in General Fund loans, \$104.7 million in Highway Fund loans, and \$210.1 million in Metropolitan Parks, Sewerage and Water Funds loans.

Given the fact that federal funds are also available for some projects, the volume of public design and construction contracts which may be generated in the foreseeable future by the above-mentioned authorizations appears substantial.

The above description, however, does not exhaust the list of likely capital investment programs. The Commission has estimated that hundreds of millions of dollars in repairs are needed to buildings constructed during the period from 1968 to the present arising out of faulty design and construction and compounded by inadequate maintenance. (See the discussion in this report, Section VII). At most modest sums of current capital outlay have been allocated to those areas.

Furthermore, there are a number of areas where there is perceived to be a need for new construction. For example, the Commission to Report on the Status of All Buildings Occupied by the Judicial Branch asserts that there are substantial requirements for those facilities during the coming decade. In its June 27, 1980 report², the Commission estimated that space needs would increase from 418.5 thousand square feet in 1980 to 1,031.2 thousand square feet in 1981³. The short-term renovation cost to put buildings into "acceptable condition" was estimated to be between \$34.5 million and \$98.2 million ("midpoint" = \$65.8 million).⁴ The estimated long-term renovation cost for buildings (renovation which is not as "critical" but which merits "consideration" if a facility is to be maintained for court functions for a long period of time, e.g., change in heating system) was between \$57.8 million and \$89.1 million ("midpoint" = \$73.4 million).⁵

Another large investment can also be expected for mental health facilities, construction of new facilities may well be required under consent decrees entered into by the state. Thus, under pressure from the court, \$51.81 million was

appropriated for fiscal year 1981 for the Department of Mental Health (DMH) for the renovation and upgrading of facilities. However, the Court Monitor appointed to oversee compliance with the consent decrees noted that the administration's request (and the final bill):

"did not include funds for (1) at least two residential buildings at Fernald, and (2) various Phase III program building renovations mandated by the Fernald Decree which will most likely be ready for construction in FY 1981. In this regard, the defendants are out of compliance with the Court's mandate to seek all necessary funding."6*

The items would have cost \$6 to \$8 million. That request was only for fiscal year 1981. The estimates for the period beyond fiscal year 1981 are not yet available. However, the preliminary estimate for fiscal year 1982 alone was at least \$35.8 million. (This was in addition to a preliminary estimate of about \$28.3 million in other capital requests by DMH anticipated for the 1982 fiscal year.)

There also appears to be significant activity in the offing with regard to the Commonwealth's armories. Chapter 466 of the Acts of 1980 provided the Armory Commission with funds for independent appraisals of the Commonwealth Armory in anticipation of selling it. The Armory Commission was authorized to sell that Armory (under certain specified conditions) but only if "the general court shall have authorized construction of armories to replace the Commonwealth Armory".

7 More generally, the Commission was directed to prepare:

an analysis of the operating costs of said armories, an estimate of the major repairs needed by each such armory,....a designated list of sites for new facilities to replace the Commonwealth Armory, if said armory is sold...(,) the estimated costs of land acquisition and construction of new facilities, a determination of availability of federal funding for such construction,...., and a comparison of the costs of operating the Commonwealth Armory with the costs of replacement facilities.8.

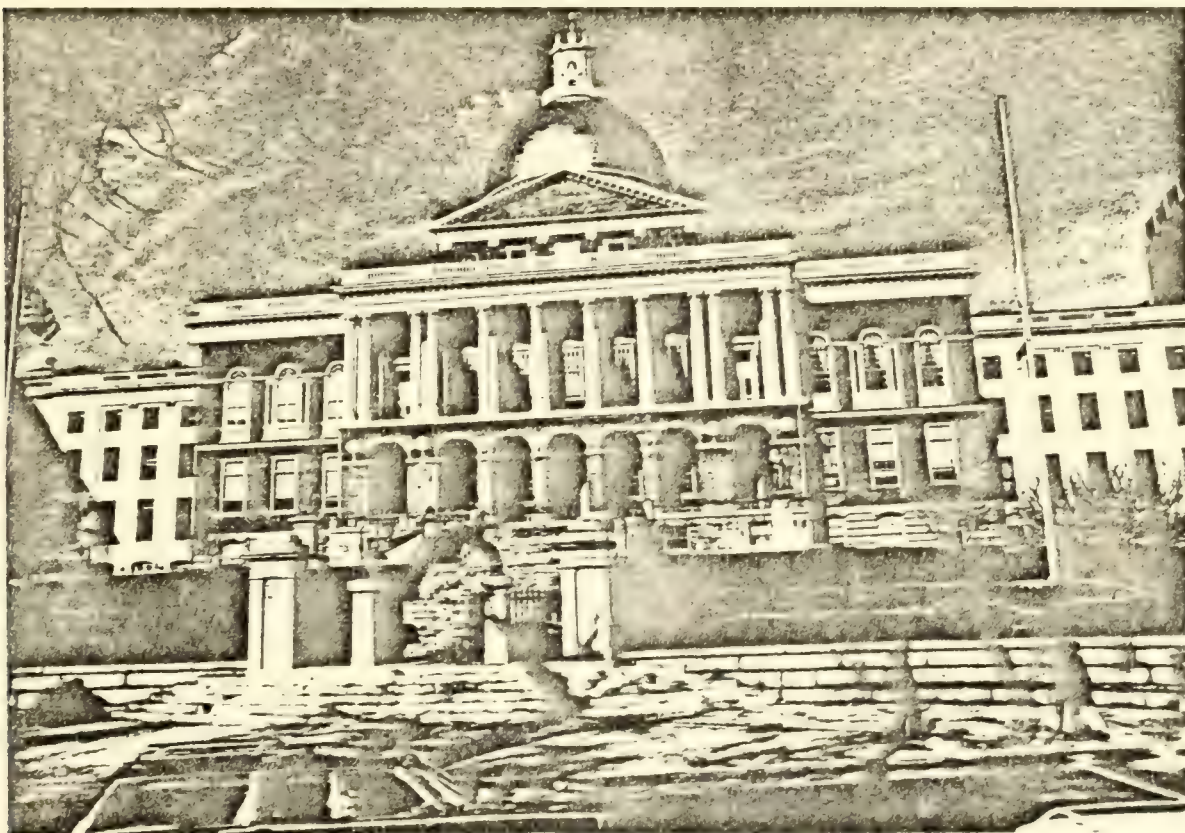
In sum, substantial capital outlays can be anticipated in the near and long-term future. The structure and processes that govern these projects will have a significant impact upon the quality of public facilities, the nature and amounts of subsequent expenditures and the moral climate that pervades the public procurement process.

(The next page is p. 19.)

*United States District Court Monitor, Report of August 1980, pp. 10-11., with reference to: Ricci v. Okim, No. 72-469-T (D. Mass., filed Feb. 2, 1972); McEvoy v. Mahoney, No. 74-2768-T (D. Mass., filed July 23, 1974); and Gauthier v. Mahoney, No. 75-310-T (D. Mass., filed Sept. 7, 1975).

FORMAL ORGANIZATION AND PROCESSES

This section describes the agencies involved in building and public works projects and the roles they play in the procurement and construction process. It is divided into two parts: 1) Organization of the Commonwealth lists and briefly describes the major responsibilities of each agency and, in some cases, the facilities under its aegis; 2) Organization of Project Planning and Management describes the methods by which the principal agencies concerned with buildings are supposed to fulfill their obligations in the process. The reader should bear in mind that these are descriptions of formal organizations and processes -- the way agencies are supposed to be organized and the way they are supposed to function -- and that the descriptions refer to the period under the Commission's purview, namely January 1, 1968 through December 31, 1981.



The Statehouse, Boston.

Organization of the Commonwealth

The Commonwealth of Massachusetts is involved in the full spectrum of activities necessary to deliver the physical facilities required for the implementation of the State's public programs. These activities include planning, design, contract award, construction and closeout conducted under the aegis of one or more agencies of state policy. The agencies involved are (a) state agencies, including boards, departments, divisions, bureaus and commissions

thereof; (b) "public benefit corporations," including subdivisions as funded, financially assisted or reviewed by the State. While the agencies are concerned with the same basic construction process, they differ in the management structure through which they organize their programs, the terms of capital financing required to fund the programs, the terms of capital financing required to fund the programs, and the legal and procedural frameworks which frame and govern them. Moreover, each program reflects a specific mandate of a state agency to perform certain functions or achieve certain goals defined by statute, administration regulation, or executive policy.

Table 2 lists and describes these agencies. Following the table is a list of agencies which, while outside of the formal state agency structure, are important in the Commissions investigations.

Table 2. Major Responsibilities and Facilities
of Agencies Involved in Building and Public
Works Projects, January 1, 1968 - December 31, 1981

<u>AGENCY</u>	<u>MAJOR RESPONSIBILITIES AND FACILITIES</u>
I. <u>Executive Office of Administration & Finance (A&F)</u>	Overall administrative planning and policy direction and managerial control.
A. Central Services Division (CSD)	Support services, capital outlay, real property, energy conservation.
1. Bureau of Building Construction (BBC)	On each state or county building project, responsible for technical review of capital outlay request and oversight of designed and construction stages.
2. Bureau of State Buildings (BSB)	Operations, maintenance, and security for state buildings, disposition of surplus properties, approval for lease of premises not owned by the state. Facilities: State House, Saltonstall, McCormack & Hurley Bldgs., Lindemann Mental Health Center, Springfield State Office Building.
3. Designer Selection Board (DSB)	Selection of project designers for building projects not being undertaken by an agency of the Commonwealth.
B. Fiscal Affairs Division	
1. Budget Bureau	Review and evaluation of all requests for appropriations and estimates of revenue; preparation of governor's budget recommendations and administration, through a system of budget controls, of all appropriation acts.
C. Comptroller's Division	Insure lawful and proper use of Commonwealth's funds; perform audits on Commonwealth's obligations to be paid via the treasury.
D. Purchasing Agents Division	Central screening and acquisition point for most supplies and equipment and some services, required for operation of the agencies of the Commonwealth.

- E. Off-Street Parking Facilities Provide public, off-street parking facilities within predominantly commercial areas of cities and towns.
- F. Convention and Civic Centers Provide convention and civic centers for cities and towns.
- II. Executive Office of Human Services (EOHS)
- A. Office of Veteran's Services Administer of Veteran's programs by providing financial and service benefits to eligible veteran's and/or their dependents. Facilities: Soldier's Home in Chelsea; Soldier's Home in Holyoke.
- B. Dept. of Youth Services (DYS) Care, custody and rehabilitation of delinquent youth committed by the courts. Facilities: Judge Connelly Youth Center; Hampden County Detention Center; Worcester Secure Treatment Center; Stephen L. French Youth Forestry Camp.
- C. Dept. of Correction (DOC) "Isolate and secure dangerous offenders who present a threat to society. Facilities: MCI (Mass. Correctional Institution) Walpole; MCI Concord; MCI Framingham; MCI Norfolk; Bay State Correctional Center; Southeastern Correctional Center; North Central Correctional Facility; Park Drive Pre-Release Center; Prison Camp at Warwick, Boston State Pre-Release Center; Shirley & Lancaster Pre-Release Center's; Pre-Release, Medfield, Norfolk, & Plymouth.
- D. Dept. of Public Welfare Deliver of financial and medical benefits. Facilities: rented office space.
- E. Dept. of Social Services Deliver of social services.
- F. Dept. of Public Health Deliver of Health Services. Facilities: Lakeville Hospital; Lemuel Shattuck Hospital; Pondville Hospital; Rutland Heights Hospital; Tewksbury Hospital; Western Hospital; Plus district health offices; State Laboratory Institute; Mass Hospital School.
1. Regional Health Districts Buy, construct, improve and renovate buildings for use by the district. Dept. of Public Health must certify expenditures submitted by regional board of health.
- G. Dept. of Mental Health (DMH) Provide services for the mentally ill and mentally retarded. Various state hospitals, state schools, mental health center and other facilities.
- III. Executive Office of Environmental Affairs
- A. Office of Coastal Zone Mgmt. Protect state's coastal zone areas.
- B. Division of Conservation Svs. Provide assistance to cities and towns through conservation districts and conservation commissions to acquire land through partial reimbursement by state funds.
- C. Dept. of Environmental Mgmt. Develop the Statewide Outdoor Recreation Planning Program (SORPP).
1. Office of Planning Plan and manage major capital outlay projects.

2. Division of Forests & Parks provide and manage recreational facilities outside the Metropolitan District Commission (MDC) area.
 3. Office of Acquisition & Control Provide engineering services related to land acquisition and administer the development and construction of park programs.
 4. Division of Water Resources Plan and administer the state's water resources and flood control, including the small dam and watershed construction program.
 5. Bureau of Solid Waste Provide assistance to communities in the planning and reorganization of resources recovery facilities for the disposal of solid waste.
- D. Dept. of Environmental Quality Engineering
1. Division of Water Pollution Control Administer grant programs leading to the planning, design and construction of publicly owned waste water treatment facilities as well as drinking water treatment and filtration plants.
 2. Division of Waterways In charge of lands related to tidal waters; manages construction of piers and related structures, and work related to tidal and non-tidal rivers and streams, great ponds, harbors, etc.
 3. Bureau of Environmental Sanitation Manage a construction grants program for the planning and construction of water supply purification facilities.
- E. Dept. of Fisheries, Wildlife, and Recreational Vehicles
1. Division of Fisheries & Game Manage, maintain and protect the state's fishland wildlife resources and maintain facilities to stock fish and game species.
- F. Metropolitan District Commission (MDC)
1. Parks & Recreation Division Administer a regional park and recreational program and maintain parkways, boulevards, and a major commuter roadway system all within the Metropolitan Boston area.
 2. Engineering & Construction Div. Planning, engineering and construction supervision of the major projects of the MDC, including improvement and repair of park and recreational facilities, roadways, bridges, landsurveys, hydraulic investigations, materials, testing water and sewerage analysis, architectural services, landscaping and dam inspection.
 3. Water Division Operate and maintain the entire water supply systems from Quabbin and other reservoirs into the local water systems.
 4. Sewage Division Collect and treat waste water from the Sewage District and operate and maintain the facilities involved.
- G. Dept. of Food and Agriculture
1. Division of Agricultural Land Use Develop programs to preserve land for agricultural use by purchasing development rights and plan commercial farm programs and the improvement of agricultural land.

IV. Executive Office of
Transportation and Construction
(EOTC)

Plan, design and maintain public transportation services throughout the state.

A. Massachusetts Bay Transportation Authority (MBTA)

Operate mass transit services within 79 cities and towns.

B. Massachusetts Port Authority (Massport)

Owner, and in charge of operation and maintenance. Facilities: Mystic River Bridge; Logan International Airport; Port of Boston; Hanscom Field Airport.

C. Massachusetts Turnpike Auth.

Maintain and operate one turnpike, one turnpike extension and two tunnels. Facilities: Massachusetts Turnpike; the Turnpike Extension; Sumner Tunnel; Callahan Tunnel.

D. Regional Transit Authorities

Increase public transportation availability.

E. Massachusetts Aeronautics Comm.

Plan the state airport system and dispense state and federal airport development aid.

F. Dept. of Public Works (DPW)

Plan, design, construct, and maintain state highways and bridges; play a major role in transportation planning; assist cities and towns with the bridge and road program; acquire, relocate and manage property.

V. Executive Office for Educational
Affairs

A. Board of Higher Education

[V. and V.A. have been replaced by the Board of Regents for Higher Education]

Oversees the development of higher education programs including review of budgets and capital outlay plans for individual institutions and the higher education system as a whole.

B. Universities

1. University of Mass.

Three universities (Univ. of Mass. with three campuses: Amherst, Boston and Worcester).

2. Southeastern Mass. Univ. (SMU)

3. Univ. of Lowell

C. Division of State Colleges

Oversees ten institutions.

D. Board of Regional Community Colleges (BRCC)

Oversees fifteen community colleges.

E. Dept. of Education

Provide planning, financial and technical assistance for elementary, secondary, and adult education in the Commonwealth.

1. Division of School Facilities

Administer financial aid programs to cities and towns for school building construction.

F. Board of Trustees of the State Library

Responsible for the State House Library which serves the entire state government. Facilities: Finegold Library

G. Board of Library Commissioners

VI. Executive Office of Economic
Developmental and Manpower
Affairs

Create jobs in the private sector; improve the state's economic climate; resolve specific business problems; protect and enhance the economic welfare of employees.

A. Dept. of Labor & Industries (DLI)

Insure that every place of employment is free of occupational safety and health hazards; administer and enforce those statutes protecting employees' economic rights. Enforce prevailing wage laws; assist in the enforcement of the bidding laws on construction contracts.

- 1. Dept. of Industrial Safety
- B. Dept. of Commerce & Development Develop policy guidelines.
- C. State Office of Minority Business Assistance (SOMBA) Coordinate and implement programs which strengthen minority enterprises in the Commonwealth.
- VII. Executive Office of Elder Affairs Provides programs addressing the health and service needs of elders in the Commonwealth.
- VIII. Executive Office of Public Safety Protect the public from injury to persons and property by natural forces and human actions.
 - A. Dept. of Public Safety
 - 1. Division of State Police
 - 2. Division of Fire Prevention
 - 3. Division of Inspection
 - B. Registry of Motor Vehicles
 - C. Military Division
 - 1. Armory Commission Supervise and control the construction of all armories or air installations taken, purchased, or erected by the Commonwealth.
- IX. Executive Office of Consumer Affairs
 - A. Division of Registration Regulate, license, handle complaints and hold disciplinary hearings, with regard to a range of trades and professions, including those in architecture, engineering and land survey.
- X. Executive Office of Energy Resources Establish an energy audit program, an energy conservation improvement program and energy programs to provide alternative energy sources for buildings and facilities.
 - A. Office of the Secretary
 - B. Department of Energy Resources
 - C. Energy Facilities Siting Council Located in Executive Office but not subject to its control; Oversees the planning, development and siting of major electric, gas and oil facilities in the Commonwealth.
- XI. Executive Office of Communities and Development (EOCD) Primary responsibility for achieving the objective of providing adequate housing for low income households and elder citizens, through its programs for new housing construction, rent subsidies, and urban neighborhood renewal.
 - A. Department of Community Affairs Responsible for the state housing assistance for low and moderate-income families, elderly, and handicapped.
 - B. State Building Code Commission Responsible for standardization and enforcement of building codes throughout the Commonwealth.
 - 1. Bureau of Housing Development Supervises the planning, design and construction of public housing authorities undertaken by local housing authorities.
 - 2. Bureau of Housing Modernization Administers state and federal funds for major maintenance and modernization projects to upgrade existing state-aided public housing.

The Commission found the following agencies to be important to its investigation. Those agencies, although created outside of the formal state agency structure, generally have some connection with that structure usually through approval, regulation or participation by state officials in one of those public agencies.

Gov't. Land Bank	Assist in the development of property surplus to state government and more generally, redevelop decadent, substandard or blighted open areas in the Commonwealth. Operates independently within its statutory framework.
Conservation Commission	Promotes and develops natural resources and protects watershed resources. Office of Environmental Affairs must approve projects and reimburses 50 percent of its cost.
Industrial Development Financing Operations	Promotes, constructs and expends new or existing industrial development projects in critical economic areas so as to combat unemployment.
Massachusetts Housing Finance Agency (MFHA)	Finances the building or renovation of low and moderate rental housing. Also finances construction and permanent loans. Located in but not subject to Dept. of Community Affairs.
Massachusetts Home Mortgage Finance Agency	Assists urban neighborhoods to prevent deterioration of their housing stock by providing for reduced interest rate mortgages for low and moderate income households to purchase, rehabilitate, and maintain one to four unit structures.
Urban Redevelopment Corp.	May be created to develop a single project out of concern for a blighted open, decadent or sub-standard area. Dept. of Community Affairs sets standards for project plans and establishes rules and regulations.
Massachusetts Parking Authority	Established to design, construct and operate a garage under Boston Common for the parking and servicing of motor vehicles. Located within, but not subject to the regulations of the Dept. of Public Works.
Massachusetts Health & Educational Facilities Authority	Makes loans or grants to offer mortgages to institutions for higher education and hospitals in the acquisition, construction and financing of projects. Financially and operationally independent of the state government.
Government Center Commission	Was authorized to construct Health, Welfare and Education Building, one state office building, a Division of Employment Security Building and numerous other facilities over the fifteen year period of 1960 - 1975. Was almost entirely independent from any branch or government agency, and located though not subject to the regularities of the Dept. of Public Works.
Woods Hole, Martha's Vineyard and Nantucket Steamship Authority	Provides transportation to the islands of Nantucket and Martha's Vineyard which includes among its responsibilities the purchase, construction and maintenance of necessary vessels, docks, and wharves. Authority members re appointed by three county commissioners of the three respective counties.
Massachusetts Wholesale Electric Co.	Acquires electric power and energy and sells it to cities and towns and to other public and

	private utilities within and outside of the Commonwealth.
South Shore Incinerator Authority	Authorized to acquire land within the towns of Hingham, Hull and Weymouth to construct, operate and maintain disposal facilities. The Commission has found no evidence that it was ever in existence.
Eminent Domain Fund	A fund containing monies intended for persons entitled to damages awarded under eminent domain procedures, who are under a legal disability which prevents them from receiving payment.
Regional Planning Districts and Commissions	Commissions are mandated to study the resources, problems, possibilities and needs of their districts including recommendations for physical, social, governmental or economic improvement of the district.
Advisory Council for the Planning, Construction, Operation, or Utilization of Community Health Centers	Advise on the need for community health centers and certain other health care facilities.
Advisory Council for the Planning, Construction, Operation or Utilization of Facilities for the Mentally Retarded	Survey the need for facilities for the mentally retarded and community health centers; develop programs for construction of such facilities.
Health Facilities Appeal Board	Hears appeals from the Dept. of Public Health's determination of need.
Health & Welfare Commission	Communicative mechanism for the development and submission of plans to various agencies of the federal government by state and local health and welfare agencies. Also serves in an advisory capacity for the receipt and disbursement of funds to specific types of health facilities, such as medical schools, hospitals and laboratories.

ORGANIZATION OF PROJECT PLANNING AND MANAGEMENT

The physical facilities which are required to house the State's many programs have been planned and managed in a myriad of ways. Nonetheless, it is possible to distinguish several basic schemes of planning and management used by public agencies of the Commonwealth. The most common approach and the one most directly related to the Commission's work has been used by "state agencies" (basically line agencies) which are nominally under the control of the Secretariats in which they are located. These agencies conduct two sets of activities distinguished by different sets of statutorily specified procedures: building projects and public works projects. It is the former set of activities, buildings, which has been at the core of the Commission's inquiry.

Agency Structure

A brief description of the structure of a typical state agency provides a useful background for this discussion. The agency placed the function of facilities management in the hands of a Chief Engineer, whose office was in the administrative services section of the agency. The Chief Engineer answered to an Assistant Department head for administration, who in turn answered to the Department head. This line of authority was distinct from lines of program authority, which flowed separately from the Department head through sources other than the administrative services section. In certain cases, facilities management or engineering may have been within a fiscal section, which was in turn located in the administrative section. For example, in the case of the Department of Corrections, prior to 1979 facilities management had been within a program development and planning section separate from administration. But during the time of the Commission's inquiry the situation changed, with facilities shifting from the planning to the administrative section.

Going up the line, the agency head (for example, Commissioner of a Department) was responsible to an Executive Office Cabinet Secretary who, in turn, headed a structure that included administrative, fiscal, and program planning functions.

Going down the line to individual facilities within large departments, each was headed by a Director, answerable to an Associate Department head for programs. The Facilities Director may, in turn, have had one or more Program Administrators and a separate administrative services section, including a Chief Engineer or Plant Manager, thus replicating the department level structure. Some Engineers have had design capabilities, while others were managers.

There were, of course, individual variations by agency. For example, until the recent reorganization in higher education, the relationship of a given educational institution was first with its own board of trustees and then

possibly with another board governing a group of schools such as the Massachusetts Board of Community Colleges. In addition, in those situations the Board of Higher Education played an intermediate review role prior to, or parallel with, the Secretary for Educational Affairs.

Normal Capital Outlay Process

It is within this basic framework that the need for a project was supposed to and typically did arise. The further inquiry into, definition of, and decision to meet that need was governed by the processes described in the sections that follow. In brief, this meant review by the appropriate Secretariat, analysis by the Bureau of Building Construction (BBC), review by the Budget Bureau in light of whatever priorities had been set for them, a recommendation by the Secretary for Administration and Finance to the Governor and then submission by the Governor to the legislature as the capital outlay portion of the budget for the upcoming fiscal year.

The normal procedure (prescribed by statute) for projects which were approved by the legislature and signed into law was that they were placed within the control and supervision of the BBC which shepherded projects through the design and construction stages. The first step in this process was the selection of a project designer or other consultant whose job it was to design or make a preliminary study for the project. The responsibility for such selection, again prescribed by statute, was placed with the Designer Selection Board (DSB). The BBC, generally with the advice but not necessarily with the consent of the so-called using agency, then proceeded to work with the designer, administer the competitive bidding statutes for selection of the construction contractors and oversee that stage of the work. Upon completion of the project it was turned over to the using agency.

The phrase "normal procedure" is used because the statutes permitted the procedure to be avoided or circumvented under certain circumstances.

A second group of projects, namely, certain public works projects sought by state agencies, were governed by procedures which only during their earlier phases bore any resemblance to those for state agency building projects. These projects typically arose out of the functions performed by the Executive Office of Environmental Affairs and the Executive Office of Transportation and Construction. In comparison with state building projects where the funds were almost always state funds, there has often been a strong admixture of federal funds. There also tended to be a more highly elaborated agency planning procedure closely linked with federal standards or requirements and often a more intimate involvement of the Secretariat in the formulation of plans. Moreover, such projects tended to be administered by specialized agency units performing

functions roughly analogous to those of BBC.

A somewhat unusual procedure, only vaguely defined by statute, was provided for by Item 2120-9801 of Chapter 798 of the Acts of 1979 (the 1980 Fiscal Year capital outlay bill). It made available \$23.5 million to the Department of Environmental Management (DEM) for:

acquisition and development of Urban Heritage State Parks in the cities of North Adams, Gardner, Holyoke, Lawrence, Lynn, Springfield and the Dorchester and Allston-Brighton districts of the city of Boston, including the costs of furnishings and equipment, and including equipment of historical significance.

Presumably, many of the projects would involve building alteration, rehabilitation, etc. However, the provision explicitly excluded those projects from the jurisdiction of BBC (otherwise applicable by c. 7 s. 40). Thus, the projects would be under the control and supervision of the DEM.

Chapter 512 of the Acts of 1980 amended that provision to permit the DEM to enter into agreements with the above-mentioned municipalities or the redevelopment authorities in those municipalities (in the case of Lynn, the Economic Development and Industrial Corporation) "for the purpose of acquisition, development and associated costs in connection with establishment"¹ of the parks. The transfer of funds to the municipality was apparently left to the discretion of DEM. Transfers to a redevelopment authority or economic development and industrial corporation were subject to "an agreement among...[the] department, the municipality and such public entity in the municipality, which has been approved by the secretary of communities and development."² There was no further specification in the statutes of the nature of the parks or the agreement into which the DEM might enter.

The principal similarities in the process for building and public works projects occurred during the planning stage. The requests were subject to the same statutory procedure for agency requests for capital outlay items and were presented by the Governor in his budget of such items to the legislature. (BBC played no role and the Budget Bureau played little role in those stages of the process.) Once the bill was submitted, transportation projects - except for a few related to the Massachusetts Aeronautics Commission - were split off and considered by the legislature and simply do not appear in the principal or main capital outlay bill. Rather, they appeared as part of a separation authorization bill. These public works projects were not subject to the DSB procedure. Instead, the designer selection procedures were largely left to the agencies. The contractor selection procedures were also regulated by different and somewhat less restrictive statutes and there was no connection between the project management procedures used by agencies and those of BBC.

The projects described above exhaust those classes of building and public

works projects which proceeded through the "normal capital outlay process".

Projects which originate outside the normal capital outlay process included housing overseen by the Department of Community Affairs (DCA) and carried out by local housing authorities; projects conducted by the Massachusetts Housing Finance Agency (MHFA) and certain projects administered by the Division of School Facilities & Related Services.

Department of Community Affairs

Bonding authorization requests were filed as bills by the Department of Community Affairs (DCA) or by individual legislators and were enacted as amendments to the enabling statute. DCA's own housing agenda was said to be based on its Housing Needs Study, derived from the 1970 census and updated in 1978. This Study described community housing needs in terms of program type and amount. There apparently was no coordination of planning with the agencies responsible for subsidizing housing development in Massachusetts, the Massachusetts Housing Finance Agency (MHFA) which was located in, but not subject to, DCA and the federal Department of Housing and Urban Development (HUD).

The DCA bonding authorization did not specify prototype costs or project location. The DCA had established procedures for locating projects which were based on regional needs and competition among local housing authorities and which were meant to reward community commitment and good management of previous projects; to consider building reuse by authorities; and to distribute projects widely.

After the project was approved, DCA signed a two-phase contract for financial assistance with the chosen local housing authority. The first phase consisted of a grant to carry planning through the preliminary design stage. In this stage, under mandated DCA procedures, the local authorities were expected to publicize the need for designers of the project in a local newspaper as a news item. Architects' brochures were reviewed and previous clients were contacted before the authority created a short list of designers to be interviewed. The selection was made by ballot with the support of at least three authority members. The names and backup information of all interviewed firms were then sent to DCA for approval.

The local housing authority was given considerable latitude in site selection. The authority and the architect filled out site feasibility reports on four to six sites, taking into account possible cost, existing utilities, and neighborhood support. Sites were approved by DCA. The architect solicited proposals for soil testing services which were also approved by DCA.

Once schematics were prepared by the designer and a satisfactory total project cost was determined, the execution of the second phase of the project was

then approved. The architect's fee for this second phase was determined according to a schedule approved by DCA and embodied in the contract with the local housing authority.

The local housing authorities were subject to the provisions of the state bidding law (c. 149, sections 44A through 44L), as are virtually all public building projects. The local housing authority approved, and DCA commented on sub-contractors and contractors. The architect supervised construction through his clerk of the works, who was also approved by DCA. Through its field inspectors, who visited sites once a week, DCA approved change orders and payment, and checked "compliance with the construction contract," but had no formal relationship with the contractor. The local authority chairperson or the authority's delegate signed all contract documents. When finished, the project was maintained by the local authority.

MFHA

As characterized by the agency itself, the Massachusetts Housing Finance Agency (MHFA) "functions like a bank under a well defined, public charter".³ This included a statutorily defined (but very large) overall debt limit and certain generally defined criteria for projects it finances. Amendments to the debt limit or other criteria were not considered within the framework of the normal capital outlay process, nor for that matter in the bills concerned with DCA. Except for these criteria, the matter of planning and managing projects to completion was left to MHFA. Allocation of monies and basic criteria for lending were matters decided by MHFA (except when the criteria and requirements of HUD pertain to federal financing.)

MFHA decided both which projects and which development teams to take. The developer took out a construction loan and a permanent loan, and a mortgage. The developer was owner of the project and was not permitted to resell it for a number of years.

A preliminary submission by a developer included site information, information on the development team (including resumes describing the experience and competence of all members, including the architect, contractor and all consultants), a financial statement and a market survey, and a development concept.

If the preliminary submission was approved, the Executive Director could then solicit an Application for Mortgage Financing. The application included economic information about the project including estimated income, operating and fixed expenses and development costs. A market needs study was conducted to determine the feasibility of project rents, the need for housing in the area and subsidy

requirements. Also examined was the experience, credit history and financial capacity of the development team. In addition there were comprehensive reviews by design, technical, management and equal opportunity departments coordinated by the Mortgage Department.

Before construction started, a detailed construction schedule with anticipated completed date had to be submitted to the design and technical department. An MHFA field representative was assigned to each development to monitor construction and review progress payments. The development architect supervised construction. No changes could be made in plans or specifications without written MHFA approval. The design and technical department approved all developments for completion and all units for occupancy. Certification of all costs was required.

Division of School facilities & Related Services

A six-month post-occupancy review to identify outstanding problems on each development was performed (by the developer, architect, management agent, MHFA management analyst and MHFA field representative. Finally, MHFA had the responsibility to supervise each development it financed during the life of the mortgage loan in order to maintain fiscal and management quality.

The procedure for funding certain capital facilities - namely those administered by the Division of School Facilities & Related Services - was carried out through the operating budget portions of the Governor's main budget bill (H - 1). As it reached the legislature the request for these funds had taken the form of three different appropriations: those for the first annual payment on projects to be financed; those for subsequent payments on projects for which the first annual payment had already been made; and certain other grants and reimbursements, include those for planning or surveying costs. In effect, the second category (subsequent payments) was an authorization for future appropriations which would amount to many times the one for first annual payments and, broadly speaking, was analogous to a capital outlay commitment.

The Division of School Facilities & Related Services arrived at a figure for its authorization request by prioritizing all requests that had come into its office, estimating which approvable projects were likely to receive necessary local funding, and estimating the amount of first annual payments. Apparently, the Executive Office of Educational Affairs did not get involved with the determination of those figures; they were a matter between the Board of Education and the Legislature.

The appropriation requests were determined by calculating the estimated annual payments due on all projects committed in the past. They were prepared by the Division, and might be revised by the Commissioner of Education and/or the

Board of Education before submission to the Governor. Apparently the Office of the Secretary of Education Affairs did go over these figures with A&F based on judgements as to the estimated progress of the projects already approved.

The process of actually determining which projects would be financed, when, and to what extent was a matter for decision by the Division. Projects were always initiated by the local community with the Division being involved only when that community requested financial assistance. It was the local government's responsibility to select sites, draw up plans, hire any architects and consultants as might be needed beyond its own in-house staff (if any), put out bids, sign contracts, oversee construction, meet the Division requirements, accept the completed project, and provide up-front funding prior to reimbursement by the Division. The role of the Division was to guide the community in meeting state standards and to certify that those standards are met before recommending state financial assistance to the Board of Education.

Thus, after the community had presented a long-range plan of school system needs there was a conference at which the community presented a documented need for the project and a cost-benefit analysis comparing alternatives of new construction, renovation, and acquisition of other existing buildings. Every three months, the Division was supposed to prioritize projects in light of expected local funding approval and the priorities for projects which were spelled out in recent amendments to the law. The Division viewed proposed sites, assisted in the development of educational specifications, and ultimately reviewed preliminary plans prepared by the architect for the locality for compliance with educational specifications.

After the project had met all Division approvals for site (for safety, size, cost, conformity with statutory requirements), educational specifications, preliminary plans and final working drawings, the locality had to vote funds for the entire project. Only then did the Division submit the project to the Board of Education for its approval of partial reimbursement. After the project was put out to bid and a contract was awarded, the community had to submit a final estimate cost form. State reimbursement began a year after construction actually started, in the form of equal annual payments for the length of the bond.

During construction, the Division staff might visit the construction site to determine that the project was being built as approved, and it had to review the facility in operation and conduct a final audit of actual costs after the project had been completed and accepted by the school committee.

The three county agricultural schools (in Bristol, Essex and Norfolk counties) used this same procedure, but in school construction matters the BBC served the role of the building committee to plan and oversee construction and

provided the Division with necessary plans, figures, justifications and certifications.

Decisions by the Division might be appealed to the Commissioner of Education and then to the Board of Education.

Higher Education Building Authorities

All the Building Authorities were governed by members who had been appointed by the governor, and included members of the boards of trustees of the associated institution(s).

Planning department staff at the institution made recommendations to the board of trustees (perhaps through one of its subcommittees) based on their estimate of future needs. This might be preceded by some degree of informal exchange between college staff, the Board of Trustees and the Building Authority. The proposal at this stage was typically a general statement of the needs for the facility.

The next stage involved a feasibility study which may be done in-house (as in the case of the University of Massachusetts). After the total project cost was determined, the Authority executed a Contract for Financial Assistance (CFA) with the Trustees (on behalf of the Commonwealth). The CFA described the terms of project development, how plans would be executed, and a maximum project cost. It might include a guarantee by the Commonwealth of bonds and notes of the Building Authority. The Authority issued temporary notes for the financing of construction, and at a suitable date soon after occupancy refunded these notes with long-term (20-30 year) bonds.

Designer selection was carried out by a committee appointed by the Building Authority. The program for the building project was developed in consultation with the Trustees and the Building Authority. Design plans were reviewed by the Authority, a Committee of the Trustees (e.g., a Committee on Facilities) and Physical Plant or Buildings and Grounds personnel. The character of the Authority review varied widely, the State College Authority having a fair amount of staff expertise and the University of Massachusetts Building Authority (UMBA) relying heavily on the staff and resources of the University itself. Final documents were approved by a formal vote of both the Authority and the Trustees.

Bidding was carried out pursuant to the same statutes which applied to BBC projects.

Project supervision included meetings of the Authority staff, representatives of the user, personnel from engineering services of the associated institution and the contracting parties. Again the involvement by the Authority varied widely according to the in-house technical staff (none in the case of UMBA to a few for the State College Authority); the burden, if any, was then shifted to

staff of the associated institution.

After completion of the building, the university or college assumed occupancy and the institution and the Authority signed a Management and Services Agreement, whereby the institution operated and maintained the facility for the Authority. Revenues (fee, rents) were applied to debt service, operational & maintenance costs, and overhead. The building belonged to the Authority until such time as the bonds were paid off; thereupon the building became the property of the Commonwealth.

CAPITAL PLANNING AND BUDGET

INTRODUCTION

The work of the Commission and this Report deal with the process of public construction and the ways in which that process has been mismanaged. The concept of mismanagement implies a converse: appropriate management. Within the context of this "Systems" chapter what is implied is a system of public procurement that is mandated by law and which, if adhered to, would constitute "administration" of the system, rather than "maladministration". In order to understand the ways in which the system has failed it is therefore necessary first to describe the procedures whereby the system is supposed to work--the formal system, as embodied in laws, rules and regulations and administrative procedures. This will be the goal of the opening parts of the sections that follow, each of which describes a stage of the public construction process. Following the description of the formal system (when it exists) will be a description of the actual results of system operation, the problems revealed by the Commission's work, and suggestions for remedying those problems.

The discussion of the formal system refers to the period of the Commission's work. In many cases the system has already been changed, in large part through the Commission's efforts. In some instances the changes have been enacted but have yet to be implemented. In a number of instances the formal system described here is still the legally operative one. No distinction will be made among these in describing the formal system that applied to the period of the Commission's work; the entire system is discussed in the past tense.

THE FORMAL SYSTEM OF CAPITAL OUTLAY

Agency Requests

The first step in the formal capital outlay process, according to G.L. (General Laws) c. 29, s. 7 was for "[e]ach agency of the commonwealth desiring a project" to "prepare and submit to the Commissioner of Administration, at such time and in such form as he may require, its request for the project."

For purposes of this process, a "project" was defined by G.L. c. 7 s. 20 as any one "subject to the control and supervision of [the director of the bureau of building construction]...." including

(a) any project undertaken by the commonwealth or by any county, financed in whole or in part by appropriation, bond issue, or federal funds, the estimated cost of which shall exceed [\$10,000]... undertaken for the demolition of or construction of any building and appurtenant structures, facilities and utilities, including original equipment and furnishings thereof; and

(b) any project the estimated cost of which in the case of the commonwealth, shall exceed [\$10,000]..., and in the case of a county, shall exceed [\$50,000]...., for the alteration, repair or addition to any existing building and appurtenant structure, facility and utility; provided such alteration, repair, or addition requires alteration of the structural or mechanical design of the building, structure or utility

Not included in this process were:

(a) projects involving the ordinary repair or maintenance of such buildings, structures or utilities not requiring structural or mechanical alterations;

(b) any project undertaken by or on behalf of any city or town or other local authority, or

(c) appurtenant buildings or structures which are required to be constructed as integral parts of the development or improvement of sewer, water and highway systems.

In practice, the Budget Bureau prepared a Procedures Manual "For Preparation of Department or Agency Capital Outlay Request and Secretarial Recommendations" for any particular fiscal year. Typically, the manual was distributed to agencies in July of the fiscal year preceding the one for which capital authorizations were sought and contained the proposed schedule for considering the requests, capital outlay instruction forms and instructions for completing them. The Procedures Manual made provision for the statutory requirement of G.L. c. 29 s. 7 that the requests be

itemized and classified to indicate those which are most urgent, those which are essential but may be delayed and those which are dependent on the future long-range development plans of the agency

and that each request

include a statement of the estimated annual operating and maintenance cost of the facilities to be constructed, shall indicate whether the project is to repair, enlarge or improve an existing properly identified structure or whether it is to replace an existing structure or to provide entirely new and additional facilities.

Administration and Finance (A&F)

Upon receipt of the agency's request the Commissioner of A&F was, according to that same section, required to

assign the examination of the project to the director of building construction for the preparation of recommendations on the technical feasibility of the project, the type and design of construction and preliminary cost estimates (and to)

designate the budget bureau or other appropriate agency...within the executive office for administration and finance to study the requested project to determine its financial impact on the budget and its effect on the policy and program of development of the Commonwealth's services.

Agency capital outlay requests were due to A&F in early September although they might in fact straggle in weeks or even months later. They were forwarded to the Budget Bureau, the Bureau of Building Construction (BBC), and the

appropriate Secretariats. This review by the Secretariats was mandated by G.L. c. 29 s. 4 which required that before submission to the Budget Bureau, recommendations or petitions by officers and heads of departments "for the expenditure of money by the commonwealth from any source of revenue, including expenditures to be met by assessments or the issue of notes or bonds" (for any purpose other than ordinary maintenance of the agency) be "first submitted to the secretary of such executive office on or before a date set by him" (and that each secretary) "review the same and make such additions thereto, deletions therefrom and modifications therein as he deems appropriate".1

Prior to the actual submission of recommendations by each Secretary, generally in mid to late October, public hearings on capital budget items were held. The statutory requirement which apparently pertained here was that of G.L. c. 29 s. 4 which provided that before a Secretary made his recommendations, he "shall conduct public hearings, for which he shall give five days' public notice prior thereto, on all items for which he shall submit to the governor a recommendation for an appropriation of one million dollars or more."

Bureau of Building Construction Review

Review by the Bureau of Building Construction was carried out by the Long Range Planning Section at roughly the same time as that of the Secretariat, with the Bureau often awaiting the Secretary's recommendations before making its own. According to one BBC report ("BBC Report on the BBC Enabling Act, dated May 22, 1978), the responsibility of the long-range planning division included

(a) reviewing and evaluating all requests, (b) making site inspections, (c) compiling information on any existing studies or plans, (d) preparing cost estimates based on the above and/or upon costs of similar construction projects, and (e) forwarding their findings with estimated costs back to A&F for further review and refinement.

During late October and early November, according to the Manual, the proposals and recommendations were reviewed by A&F with the Budget Bureau, and the BBC (and during the Dukakis administration, the Office of State Planning). At this stage the BBC might also formulate certain requests pursuant to G.L. c. 7 s. 46, namely,

the director...may develop projects of his own whenever in his judgment the maintenance of state-owned property requires such improvements to prevent deterioration of costly future repairs ... [to the extent of] such sums as may be appropriate or otherwise made available therefor.

In addition, G.L. c. 29 s. 9, to "meet the expenses incurred" under that section

in any case where the general court fails to make an appropriation to carry out the construction, alteration, repair or development asked for, reasonable amounts in compensation for such preliminary studies, specifications and estimates not exceeding one percent of the estimated construction cost of the work may be expended; provided the general court makes an appropriation therefor.

There were, in fact, numerous instances of requests being made and approved for funds for repair projects, preliminary studies, and other kinds of projects which were in the lump-sum rather than project-specific requests. Whether any such request and approval had had its genesis or rationale in the specific provisions quoted above was not clear.

Governor's Recommendation

The remainder of October and the month of November were generally reserved for review by A&F of the capital outlay request, appeal by and negotiation with the Secretariats (and others) and final decision by the Governor. Pursuant to G.L. c. 29 s. 6, the budget director was supposed to "study and review all estimates and request and other authorizations for expenditures of state funds" which were to be submitted to him pursuant to the statutes discussed above so as to enable him to "prepare a budget for the governor, setting forth such recommendations as the governor shall determine upon."

This budget was to be "classified and designated so as to show separately estimates and recommendations for", among other things

(c) new construction, additions, improvements and other capital outlays; (d) interest on the public debt and sinking fund and serial bond requirements;... and shall include in detail recommendations of the governor relative to the amounts which should be appropriated therefor.

The precise content required of the presentation of capital outlay related items was further detailed in G.L. c. 29 s. 7A, as follows:

All estimates, requests and recommendations for the expenditure of state funds, by which such expenditures shall be defrayed by borrowing or by the issuance of notes, bonds or other obligations, for new construction, additions, improvements and other capital outlay programs and projects shall be submitted by the governor to the general court and shall be itemized and classified to indicate those requests which are most urgent, those which are essential but may be delayed and those which are future, long-range development plans of a state agency; shall show separately: - (a) the request of the agency desiring such program or project, (b) the recommendation, if any of the secretary of the executive office within such agency shall be and, (c) the recommendation of the governor; and shall include a statement of the estimated annual operating and maintenance cost of the facilities to be constructed, shall indicate whether the project is to repair, enlarge or improve an existing, properly identified structure or to provide entirely new and additional facilities. The governor shall transmit therewith a statement showing the total indebtedness proposed to be incurred under each capital outlay program or project and the fund to be charged therefor, and a statement relative to the condition of the state debt.

Submission to Legislature

This budget was, according to G.L. c. 29 s. 6, to be submitted by the governor to the general court "annually within three weeks after the general court convenes in regular session."

Strictly speaking, the statutory requirement was not in conformity with the constitutional requirement of Section 2 of Article CVII which provided that the governor

recommend to the general court a budget which shall contain a statement of all proposed expenditures of the commonwealth for the fiscal year, including those already authorized by law, and of all taxes, revenues, loans and other means by which such expenditures shall be defrayed.

The budget was to be arranged "in such form as the general court may by law prescribe, or, in default thereof, as the governor shall determine."

In the case of a governor who had not served in the previous year, the submission date was, in some cases: "within eight weeks after the convening of the general court" and in other cases "within three weeks after the convening of the general court."

The distinctive character of the capital outlay budget was also manifested in the requirements of Section 3 of Article CVII of the Constitution, namely that "[a]ll appropriations based on the budget to be paid from taxes or revenues shall be incorporated in a single bill which shall be called the general appropriation bill."

No other appropriation bill might be enacted

before final action on the general appropriation bill....except on recommendation of the governor.

This was reflected in what happened to the budget, which incorporated capital outlay and non-capital outlay items, when it was submitted to the legislature.

House Ways & Means Report

The entire bill went to the House Ways and Means Committee for its consideration but practically speaking the only portion which was seriously considered first was the general appropriation bill portion, reflecting the constitutional requirements noted above. The specific directions on that bill were embodied in House of Representatives Rule 27 which required that the House Ways and Means Committee "report the general appropriation bill not later than the second Wednesday of May." There was no similar provision with regard to when any capital outlay bill was to be reported out.

The only provision concerning timing of consideration of capital outlay bills was House Rule 28 which excepted both capital outlay bills and appropriation bills from the regular procedure concerning timing of consideration of, voting on, and the required vote for motions directing the House Ways and Means Committee to report on matters to the House or motions discharging it from further consideration of such matters.

The Rules did not regulate how the Committee actually was to consider the bill. However, there was a statutory requirement that the committee on ways and means of each chamber or the joint committee

"conduct public hearings....on all request and recommendations for capital outlay programs and projects which the governor submits to the general court;

provided, however, that....in the case of requests and recommendations for capital outlay programs and projects said committee shall give five days public notice prior to holding such public hearings." 2*[NOTE: sections 33, 34, and 35 of that same chapter regulate the timing, means and substance of the notice required.]

There were, however, rules which regulated the format of how the House was to present the bill. Rules 22 and 23 provided for certain means to identify bills or resolves providing for borrowing or giving, loaning or pledging the credit of the Commonwealth. According to Rule 20, when the capital outlay was reported out, it had to be printed in form "at least seven calendar days prior to consideration...by the House."

When the bill was reported out, the Committee was required by House Rule 21 to make available to members

a report which includes an explanation of any increase or decrease of five percent or more which results in an increase or decrease of one million dollars or more for any item which the governor had made a recommendation, and an explanation for the deletion of an item recommended by the Governor, and for the addition of an item for which the Governor has made no recommendation.

Senate Consideration

After the House considered and voted upon the bill it was sent to the Senate Ways and Means Committee. The Senate, however, according to its Rule 27B, required a much more elaborate presentation of "[a]ll bills providing for capital outlay programs and projects" reported by Senate Ways and Means, namely, that they be "itemized and classified to indicate those requests which are most urgent, those which are essential and may be delayed and those which represent future, long-range development plans" and stated:

(a) the request of the agency desiring such program or project; (b) the recommendation, if any, of the secretary of the executive office within which such agency shall be; (c) the recommendation, if any, of the Governor, and (d) the recommendation of the House Committee and the Senate Committee on Ways and Means.

In addition the report had to include "a statement of the estimated annual operating and maintenance cost of the facilities to be constructed" and an indication as to "whether the project is to repair, enlarge or improve an existing, properly defined structure or to provide additional or hitherto unprovided facilities", as well as a statement showing "the total indebtedness proposed to be incurred under each capital outlay program or project and the fund to be charged therefore" (and) "a statement relative to the condition of the state debt."

This language very closely tracked the language in G.L. c. 29 s. 7A defining the content of the governor's submission of the capital outlay portion of his budget.

Conference Report

The Senate version of the bill was reported out and voted upon by the Senate. If there were differences between the Senate and House version, then the bill was submitted to a committee of conference to the extent and only to the extent that there were differences. At this point Joint Rule 11A required that "the clerk of the branch requesting said committee" shall cause to be printed and make available to the members of the General Court" a list of the matters of disagreement identified by item number and item purpose and showing the amount appropriated therefor by each branch of the General Court, and any other matters in disagreement and the position of the said branches with respect thereto."

The Rule regulated the timing of the report, namely that it could not be "considered or acted upon by either branch" until copies of it "shall have been in print and available to the public and to the members of the General Court, except that a report from such committee or conference that is unable to agree may be considered and acted upon the same day that such report is filed."

The content of the Report was also regulated by the rule to the effect that it was to consist of

matters of difference so referred and so identified, showing the amounts appropriated therefore by each of the said branches and other matters in disagreement and the position of each branch with respect thereto, and shall state said committee's recommendations with respect to the matters so referred. Matters on which there exist no disagreement between the branches shall not be disturbed by the committee.

Governor's Action

Assuming there was agreement in the conference committee, it was then put to a vote of the House and Senate and then submitted to the Governor. The Governor might veto the bill in whole or in part; this might involve the total elimination of an item or a reduction in the amount authorized for it. Such vetoes were subject to a two-thirds override by both houses of the legislature.

COUNTY BUDGETARY PROCESS

Agency Requests

Annually, on or before December 15, county agency directors submitted their budget estimates to the county commissioners. These estimates included personnel, supplies and equipment and principal and interest due on bonds for capital facilities. From these estimates, the county commissioners compiled the county budget request, including receipts, expenditures, and repair and construction of county buildings.

Submission to State

By January 31, the estimates were recorded by the county clerk and submitted to the State Department of Revenue's Director of Accounts. After analysis and classification, the Director of Accounts, by March 1, submitted the budget request

as a single appropriation bill indicating the separate amounts to be allowed each county. The bill was heard by the Joint Committee on Counties. These county budget bills were reported to the House of Representatives by the Joint Committee on Counties and were processed and enacted according to the usual procedures for bills before the General Court. Since county appropriations are based upon their tax revenues³ they are not subject to the governors powers of reduction or vetos.

After the budgets were passed, detailed schedules of the sums appropriated were filed with the Director of Accounts who filed a certification of the amounts with the county treasurer and commissioners. No liabilities or expenditures could exceed the certified amount.

Project Approval

Prior to any contract for the erection, addition, repair or construction of a county building, the county commissioners had to request and receive authorization from the General Court.⁴ The county commissioners filed a project bill with the general court. These bills consisted, in general, of a description of the project, authorization for the type of work, i.e. plans and specifications, construction, land acquisition or a combination thereof, and an amount that the project was not to exceed. In the same project bill, the commissioners could request authorization to borrow the necessary funds.

The bills were reviewed by the Joint Committee on Counties. After consideration of the bill, the committee reported the bill to the General Court. Only upon passage of the bill by the General Court and approval of the Governor was the county authorized to take further action upon the project. During the course of a project, more than one project bill could be passed by the legislature, each authorizing different phases as the work progresses.

Results of Capital Planning

The systemic weaknesses which characterize the capital planning process have resulted in the loss of millions of tax dollars and delay or failure to meet the needs of the Commonwealth's inhabitants. Serious problems have occurred at all phases of the project planning process resulting in abandonment of projects during or after the design stage, delay between stages of a project awaiting a decision to proceed, the building of projects which are unnecessary and the building of projects which are either under-utilized or never used for their intended purpose.

Numerous projects have been abandoned during or after completion of the design stage. The consequences are funds wasted on design fees, the occupation of staff in unnecessary projects, and the loss of resources from higher priority projects. To date the Commission has unearthed numerous examples of such poorly planned facilities. They represent millions of dollars in design fees and thousands of hours of review or administrative work by state employees. The problem repeats itself throughout all state agencies, but is not unique to them.

Nearly \$1.2 million dollars was wasted on the design of the ill-fated Health, Welfare and Education Building as part of a proposed Health, Welfare and Education Center. The most remarkable aspect of the building project, which was abandoned before the construction stage, was that the design fees were spent on two different designs and that the second design was awarded even though it was apparent that funds were not available for construction. In this respect the State Auditor observed:

The present practice has existed for many years and...architects' plans representing literally millions of dollars in taxpayers funds are gathering dust in the files of various state agencies...as a result of the fact that the proposed construction was never implemented.1

In the case of the Norfolk County Superior Courthouse approximately \$223,000 in design fees were wasted for a building which was never built, apparently because of a failure to take into account local historical and environmental requirements. The courthouse was placed in Dedham, an older and historical district in the county. The plan called for a high-rise building near the Charles River. This was unacceptable to the community -- a result that could have been determined before expenditure of the design fees.

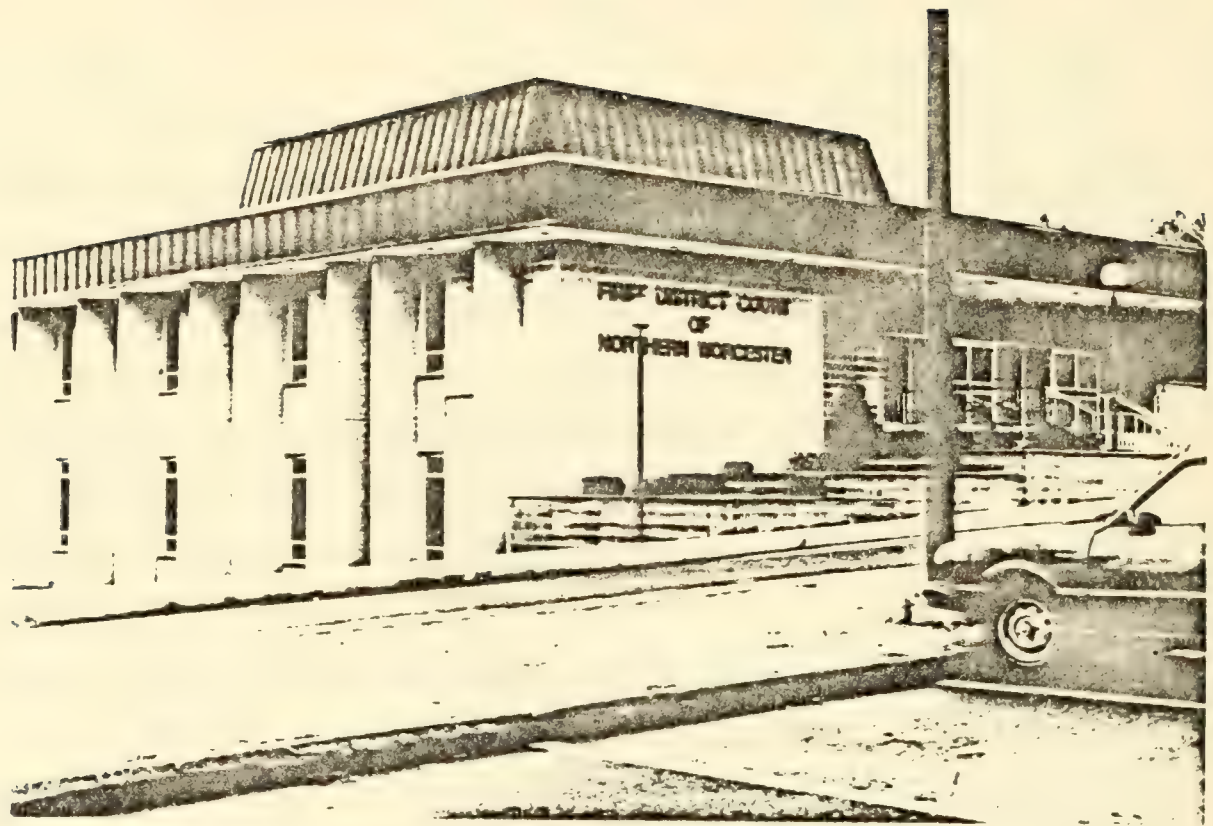
In September 1976, two years after the designer had been engaged (and after the project had ballooned from \$6 million to \$13 million) the BBC and the County Commissioners decided to discontinue the project. There was no authorization to develop further plans. The courthouse was never built and no new building has yet been authorized.

Lack of coordination and failure to plan was one of the problems which plagued the never to be built South Shore Community College. There were numerous studies, including inquiry into the environmental impact, over a period of years. Several appropriations and approximately \$300,000 in expenditures after the start, the project was abandoned.

These difficulties were by no means peculiar to projects administered by state agencies. For example, one such costly fiasco was administered by the University of Massachusetts Building Authority. The project, called the Fraternity/Sorority Park, was initiated in 1971 to provide housing accommodations for 600 students at the University of Massachusetts campus at Amherst. This was done even though in December 1970 the trustees of the university had voted to limit enrollment growth, resulting in vacancies in dormitories and in Amherst apartments in the fall of 1970. Had a growth study been prepared to ascertain needs for housing, the project may never have been initiated. Full working plans were prepared anyway, at considerable cost. These events, among others, prompted one management company advisor to recommend that:

...for future projects, more comprehensive planning and definitive determination be made before making such significant major expenditures as land purchases and architects' fees. 2
By 1975, over \$570,000 had been expended for the purchase of land,

architects' fees, interest expenses and appraisal and other fees and expenses; yet the project lay dormant. It was abandoned ultimately. The Authority's notes could no longer be rolled over, so the already incurred expenses of over \$610,000 were paid from a fund for dormitory renovations to avoid default. The land may some day be used, but it now remains underutilized.



District Courthouse,
Gardner, Mass

Sometimes projects are not abandoned, but are delayed for years while a decision is made whether to proceed from one stage to another. These delays can increase the cost of a building substantially over the initial budget as a result of the double digit inflation . Such delays also entail expensive redesign of outmoded plans when construction is finally authorized. At Southeastern Massachusetts University, for example, the plans for one building were finished and accepted six years before construction was authorized. By the time funds were finally appropriated for construction, needs had changed. The program for the facility had to be completely revised and the design modified. For over a year, while the new program was being developed, no work was done on the design. To this date, no construction has yet begun. ^{2a}

Delays may arise not only from faulty conception of the project, but from failure to take into account other planning requirements. For example, in 1967, \$1,000,000 was appropriated for land acquisition and for preparation of plans for playing fields and additional parking facilities at Lowell Technological Institute. The contracts which were ultimately generated by this appropriation were not completed until 1979, over ten years later. One reason for the delay was that in 1974 the Department of Natural Resources Commissioner vetoed the project, apparently because it called for filling in a portion of the Merrimack River.

Unnecessary projects seem to occur in various ways. In some cases, a particular project chosen for funding is simply not the best choice that could be made. This was typified by the case of the new waste water treatment plant at MCI Concord. This facility was constructed at a cost of over half a million dollars, although the town of Concord had offered to accomodate the prison's needs in a new, federally-funded waste water treatment plant it hoped to construct. The town had also offered to renovate the existing plant on an interim basis to meet the facility's needs until the newer, larger plant was complete. Had the town's proposal been accepted, it would have saved the taxpayers over half a million dollars in construction costs. It may have also realized continuing and substantial savings in operating costs.

In other cases, unnecessary projects represent the culmination of a series of unplanned decisions made in the absence of statewide priorities. Thus, in the absence of a state-wide policy on locating district courthouses, each county and town that wanted a new courthouse went directly to the legislature with its requests. The result was that Worcester County, with a population of 637,037 has eleven district courthouses, only one less than Middlesex County, with a population of 1,398,397. Essex County, with a population of 637,887, has nine district courthouses, while Norfolk County, with a population of 604,854, has only five district courthouses.

Sometimes a project is completed and then it is discovered that it really was not needed. For example, in 1980 the legislature, at the Governor's request, authorized the sale of Pondville Hospital in Walpole. The hospital, built at a cost of \$7,000,000 in 1972, was being used at 34% of its full capacity. It had been designed as an acute care center which specialized in the treatment of cancer patients. Although it had a capacity of 104 in-patients, just prior to the authorization for sale it treated only 34 in-patients and outpatient use was at 60% of capacity. Moreover, there never was a time when use of in-patient capacity exceeded 75%. The loss in these cases is not merely one of time and resources required to build the facilities but also the inefficiency in operating them. Thus, while use declined, operating budgets at the hospital rose from about \$3.8 million in 1974 to nearly \$5.7 million in 1979 with a similar proportional rise in the net cost to the state.

A similar fate was suffered by the Student Union building at Southeastern Massachusetts University with more costly consequences to both students and taxpayers. One participant referred to the Student Union as "an expensive mistake sponsored by an overzealous SMU Building Authority." He added that "if it proved necessary for the Commonwealth to purchase this facility to get it on permanent financing, we should insist that this action be accompanied by changes

in the enabling legislation of the SMU Building Authority to force accountability for such disasters..." Another individual responsible for evaluating that purchase observed that:

The Building Authority blithely went forward at that campus and constructed a huge 'white elephant' that cannot be supported through assessments on students.

The model for the SMU Campus Center apparently was the University of Massachusetts Campus Center. The expectation was that revenues would come from student activity fees and profits from various stores and businesses in the building. However, the Amherst Center had many more businesses and the school more students. As a result, the student activity fees around 1976 were half as much at Amherst as at SMU. The uproar over the resulting high fees resulted in the purchase of the facility by the Commonwealth for approximately \$4.6 million.

Some projects are completed and then not used for the intended purpose. In 1974, for example, a \$4.2 million dollar contract was awarded for the construction of a dormitory complex at the Fernald State School. It was supposed to be designed with homelike features such as individual rooms and kitchens. In an effort to comply with the requirements of a consent decree the Department of Mental Health relocated many residents to the new facility. The new dormitories became overcrowded and the living and activity rooms were converted into more sleeping areas. Individual kitchens were never used because the school staff found it more economical to cook in a central location and distribute food to the dormitories. As a result, the "homelike atmosphere" never materialized and after two years of occupancy the dorms are being used contrary to the original program.

Another project which was never used to fulfill the originally stated needs was John Augustus Hall in Oakdale. The former Worcester City Training Center was acquired by the Department of Youth Services (DYS) for the internment of youthful offenders between seven and twelve years old. The original purchase, renovation of the existing building and construction of a new dormitory building cost over \$450,000. In 1966, another \$1,091,000 was appropriated for construction of a combination gym-auditorium and an administration-cafeteria-classroom building.

The facilities were designed for young children. All the furniture was juvenile in size and the building had no security features such as windows with wired glass. (A legislative Post Audit report stated that 28 youths escaped from the facility within a two-month period.) However, in the late 1960's the DYS decided to use the facility for teenagers. Because it had no security measures the detention center was abandoned as such. The DYS then proceeded to use the facility as an administrative headquarters for processing expenditures but this function was then transferred to another facility. The School was abandoned and

the Department later transferred the facility to the Executive Office of Administration and Finance in 1974.

At times, problems in using a facility arise from faulty estimates of future needs for ancillary services. A case in point is the boiler plant at Tillson Farm of the University of Massachusetts in Amherst. Completed in 1974 at a cost of over \$9.5 million to date it has been in (partial) service only once, namely for a period of eight months from 1974 to 1975. Among the spate of problems which have plagued this venture are ones associated with estimates of the campus' future needs.

Apparently the Board of Trustees of the University, relying on an analysis in 1969 showing that there was a price advantage of oil over coal, sought the construction of the oil-fired facility. Assuming that the analysis had merit, one need not fault the University for its decision in light of the unexpected events of 1973 and after. However, University of Massachusetts President Robert Wood, in a 1977 Memorandum to the Committee on Buildings and Grounds stated:

In addition [to the 1973 events] significant changes have occurred in the assumptions regarding the ultimate size of the campus and in overall energy consumption. With the intensive conservation measures initiated after the 1973 oil embargo, the steam requirements at the campus are now within the capacity of the original coal-fired plant...3

Although Wood characterized the changes as ones "which no one could have foreseen in price and demand"⁴ the fact that the old facility can meet campus needs suggests that the original decision was not a sound one.

It should also be noted in this context that the old plant was located at the center of the campus, the new one was placed over 1.5 miles away, ostensibly to decrease air pollution on campus, to avoid trucking fuel into the center of campus, and for aesthetic reasons. However, the State Auditor in 1978 in his report on the BBC and its projects observed that:

There does exist next to the old plant sufficient land space to have accommodated the new plant. If the new plant had been built in this available area it would have negated the need of the long pipeline and resulted in a much more efficient and economical installation.⁵

It was the 1.5 mile connection between the power plant and the campus which was the source of serious technical problems which made the venture a fiasco.

Other problems which occur in the planning process stem from lack of clear definition, lack of coordination, and lack of clear planning criteria. Lack of definition is illustrated by the following example. The Director of Fiscal Administration at the Department of Youth Services sought to have a pool included in the contract specifications for a Worcester facility. The legislative authorization for the facility called for a multi-purpose program which he felt included that pool and the inclusion would result in no increase in the project

cost. But after taking two months to decide that issue the BBC concluded that if the legislature had wanted a multi-purpose pool, they would have said pool.

Joan Belle-Isle of the Department of Corrections emphasized that the lack of articulation of the project and the association legislative authorization led to numerous disagreements. She stated that she spent

well over half of [her]...time trying to negotiate some agreement on the intent of projects, what projects were to include what, what they weren't to include. What was intended to be undertaken by these capital outlay authorizations.⁶

One case involved a project for a security improvement at the Northeast Correctional Center. Because of concern about escapes by some inmates, the Department requested:

money...to repair the doors, and to put up a fence along the property line to discourage inmates in the event that they were in the process of escaping from at least going in that direction.⁷

Belle-Isle then observed:

Through an oversight probably on my part the security fence was not specifically mentioned in the capital outlay request although in all discussions we had over that request it was clear the genesis of it was that the particular escape which had all the potentials of turning into a real tragedy, and I proceeded after the money was appropriated to argue with the Bureau up until the time I left whether or not that security fence was or was not to be included in the work to be done.⁸

A similar problem which caused considerable delay and threatened the whole project concept arose during the renovation of several buildings on the grounds of the Gardner State Hospital for conversion to medium security prison. The Department had specified a double chainlink fence for the security perimeter. However, at some point during the design phase:

[T]he BBC engineer on that project proceeded to question the need for literally all of the security aspects of that project. He suggested that because the fencing was so sensitive and such a major part of the project wouldn't we be better off having a single double fence, and seeing the reason we had to put toilets in the individual rooms where the doors are locked, could we not do without the locks. We spent easily six months going around and around about those issues which were so fundamental to the basic functioning of what that facility was intended to be. If we had capitulated to the engineering concept of what that project was all about, the Department could not have opened that facility in good conscience. It would have been just plain dangerous.⁹

In some instances the problems combine poor planning with failure to coordinate with other agencies' requirements, and just poor administration. A case in point was the Northeast Training Center and Residential Unit which the legislature, in 1969, decided would replace the Institute of Juvenile Guidance. The Department of Youth Services was authorized to expend \$2.5 million for the purchase of the former Maryknoll novitiate property in Topsfield, for renovation and alteration of the existing buildings, construction of a new swimming pool, and for purchase of necessary furnishings and equipment.

On February 4, 1971, after the DYS had expended over \$1.3 million for purchase of the property and had begun the initial phases of the project the State Auditor wrote to then Governor Sargent stating:

The Department of Youth Services is fully aware at this time that the ultimate cost of this project will far exceed the amount appropriated and it appears that they are proceeding with undue haste in expending the funds appropriated. It is my considered opinion that their present activities are based on the premise that if the \$2,500,000.00 appropriated is expended the Legislature will be compelled to provide additional funds or monies already expended will have been wasted.¹⁰

The State Auditor observed that no provision had been made for a permanent sewage disposal system which would add to the cost of the project and if not provided for would cause the facility to be closed down within eighteen months.

In a DYS memo to A&F explaining the agency's failure to comply with the legislative mandate stated that it had "really never got a program going for which the site was purchased" because of community opposition.¹¹ In addition, the local Department of Public Health had "determined that the sewage system was designed so that it was not adequate to support a program with twenty-five youngsters in it plus fifteen staff [in a facility that had housed 150 nuns]." Finally, the Department of Public Safety had "determined that the gymnasium and classroom area had structural damages sufficient enough so that they forbade us to use it for program use."

The legislature's Committee on Post-Audit itself observed that the DYS had made no effort to correct the structural damages in the gymnasium and classroom area and never used this facility as a replacement for Bridgewater." The Department had "no reason, or excuse, for this failure."

Though DYS closed the Bridgewater facility, it never replaced it. From 1970 through 1974 it spent \$50,000 a year to maintain it. Although the facts are not entirely clear the major or perhaps only occupant (free of charge) was a private corporation concerned with the rehabilitation of youthful offenders which was paid a weekly sum for each child under DYS custody housed at the facility and enrolled in the program. After a fire the private corporation departed and the facility was transferred to A&F.

The Government Center complex, now maintained by the Bureau of State Buildings (BSB) offers an odd twist on poor coordination, namely, the case of an agency failing to coordinate plans for two of its own projects. Approximately \$500,000 in renovations was required by the BSB for the plaza between the Saltonstall and McCormack Buildings. This project was in the planning stage concurrently with a handicapped access project, also requested by the BSB and estimated to cost \$500,000. Despite this, the plaza renovation was completed without coordination with the handicapped access. In order to complete the

latter it will be necessary to pull up the very expensive brickwork and probably necessary to work on the electrical conduit in order to put in the front doors that will be required.

In some cases, a substantial responsibility for planning, including the allocation of funds from a lump-sum authorization, falls on an agency (such as the Department of Community Affairs) as part of its mandate. There can be and there have been problems of lack of clear planning criteria at the appropriation stage and of an excess of political influence at subsequent stages. Thus, when asked what kind of planning goes into preparing the omnibus authorization for housing projects, Steve Demos, Chief Architect at DCA replied:

That is an arbitrary number. One would like to think that it is based on some sort of look at fiscal capacity of the state and they feel they can take on another hundred million dollars of bonding authorization; but, as far as I know, it is arbitrary.¹²

The request:

could come from CHAPA (Citizens Housing and Planning Association). It could come from outside of the Department. Somebody puts in a bill ranging as far flung as to meet the housing needs for the whole state which would probably be God knows what, five hundred thousand units of housing or something to more modest sums, and then it is negotiated until--usually they said the last two times and I suspect this time it came out as one hundred million dollars. It is a nice round number.¹³

The hundred million figure did not "represent a figure based on demographics." ^{13a} Even though the "economic size" of a project "would probably average between eighty and one hundred" the average project is "between sixty and eighty." To some degree there can be justification for that "by the social and environmental context;" but Demos also noted:

[w]e are in a political system and the more ways that you can cut the pie, the more people get benefits[,]....[e]ven though the individual cost for a person house may be more expensive.¹⁴

Although the authorizing legislation specified no allocation criteria the Department had developed some and had attempted to follow them. However, Demos observed:

To be frankly honest at this point I feel many of the criteria were overlooked when the final allocation came. The allocations were made in a very political climate. It was made during - they were made - round one was last spring and round - or last winter and was, I think, fairly honestly followed the criteria they had set. Round two to three were made in the summer and the fall. That was in the midst of campaigning and it seems that many of the criteria and many of the projects in fact that were specifically given low rate and did get awarded.¹⁵

Another state agency responsible for overseeing the expenditure of large sums of money for building construction is the School Building Assistance Bureau (SBAB) which has been characterized as suffering from similar problems of poor or inadequate planning.

The Committee on Post Audit and Oversight in its 1975 report¹⁶ on the School Building Assistance Program of the Department of Education observed:

In the last five fiscal years (1971-1975) the Board of Education has approved new school construction at a cost in excess of \$1,380,200,000. The estimated state grant commitment for this will exceed \$1,150,320,000. The level of such activity has taken place in the absence of any comprehensive long range capital planning process and this despite school enrollment projections published in 1971 by the Department of Education indicating an absolute decline in pupil enrollments over the coming decade.

Even though a shift in funding priorities was required:

[no] capital facilities plan has been prepared, however, which indicates when, where and what type of facilities must be replaced and no priorities for such replacement activities have been established.

The Committee concluded:

Planning by the SBAB is virtually non-existent at the present time. Each city, town or district comes to SBAB upon recognizing a need in its community and the SBAB and the Board of Education react to the local perception of need. The need for short- and long-range capital planning and budgeting on a comprehensive basis is apparent.¹⁷

Among its findings were that the Board of Education had:

failed to develop and publish criteria, carrying the weight of rule and regulation, for approving school construction projects for participation in the program.¹⁸

Moreover, the program as then administered was "characterized by a largely arbitrary and judgmental process for project design and acceptance.¹⁹ No minimum or maximum program or facilities standards, as authorized by law, had been "promulgated by the Department of Education to rationalize the Commonwealth's construction assistance program."²⁰ In addition, "[no] significant comprehensive capital facilities or budgetary planning for public school facilities"²¹ was being conducted by the SBAB. The result was that although replacement of aging facilities was the principal need, "[n]o planning ha[d] been done...to determine the timing level, location or cost of such replacement."²² *

* To some degree the situation has improved. In the mid-seventies legislation was passed which established specific priorities for classes of projects and criteria for evaluating specific ones. In addition, an elaborate set of regulations has fleshed out that approach. However, the process is still one characterized by projects being developed at the initiative of localities and evaluated sequentially on an individual case by case basis within the framework of some pre-established funding limit. Thus there is no articulated or comprehensive planning policy in light of which particular decisions are made. This may reflect a policy judgment that, for whatever reasons, the initiative should indeed remain with the localities.

GENERAL FACTORS INFLUENCING CAPITAL PLANNING

The list of horror stories could go on for many more pages. The issue then is what in the nature of the system for procurement of capital facilities permits or causes such problems to arise. The answers are not all clear cut. Moreover, there are different kinds of answers. On the one hand are those that address immediate structural and organization failings and those norms for action which can be written into statutes. Answers and solutions of this kind were among the principal tasks of the Commission; they are reflected in the proposals for legislation discussed throughout this report. On the other hand, there are other "answers" which reflect the fact that the problems are either not readily amenable to solution by statute or even by administrative directive, rule or regulation. In this view, the "problems" are manifestations of the system of political values which inform all the activities discussed. It is important to touch on these other "answers" for two reasons: to define the boundaries of the area within which remedial action suggested by the Commission was sought and to understand the limits placed on those remedies within the area they are supposed to operate.

The principal factors, discussed below, are:

- 1) The capital budget receives less attention than the operating budget because it is nominally smaller;
- 2) The effects of the capital budget are long-term, while political actors are concerned with the short-term;
- 3) Capital planning is based on long-term factors (programmatic, technical and fiscal), many of which cannot be precisely anticipated;
- 4) Capital budget items tend to be both large and geographically localized, resulting in great interest among a small group of people and little interest among others;
- 5) State agencies have few resources and little incentive to engage in long-range planning.

The state's operating budget is a matter of higher priority than the capital budget and considerably more resources are allocated to it. The reasons are manifold. The nominal amounts involved in the capital budget are much smaller. The current state budget is approximately \$6 billion. The capital budget may fluctuate from year to year from tens to hundreds of millions of dollars but relative to the operating budget it is small. That it tends to "leverage" much larger sums is not so evident. Depending upon the current interest rates the true, long-term cash cost of a project can be doubled. The payback periods are

long and so the impact of current decisions is felt years later. This is especially true of the cumulative effect of a series of capital decisions. Annual re-payments of principal and interest are about 7.5 percent of the annual operating budget.

Not only are the costs of a capital budget not felt immediately but also the benefits are not experienced for some time to come. The time it takes to develop and complete a capital project is a matter of years and mismanagement can even stretch that into a decade or more.

This long time scale is very significant for participants in the system. For the political actors the significant time periods are short: for governors four years and for legislators two years. Even those are probably overestimates - especially for new participants - since each must be concerned with learning how the system works and then devote time to being re-elected. For executive appointees the time frame is probably equally short, if for other reasons. It is unlikely that any of these actors are much concerned with being called to account for the consequences of their decisions years after they may be out of office - elective or appointive. To a lesser extent the same is true with regard to the long-term benefits to be derived from those decisions when contrasted with the short-term benefits to be gained or lost from supporting the start of a particular project in a particular locality now. Moreover, the cost impact of the capital budget is felt only indirectly and in the aggregate. The precise timing for the actual issuance of bonds and expenditures of funds is of interest to very few. The actual effect is submerged in the overall impact of many other, diverse projects which were authorized at very different times.

The formulation of a capital budget involves - or should involve - longer-range planning. Changes in the operating budget tend to be piece-meal and incremental. Decisions can be based on solid figures derived from relatively well-documented recent experiences. But capital budget items involve projects which will be completed years from now and whose effects - programmatic and financial - will be even more long term. The resources to plan even for reasonable projects can be considerable and the probability of success may be low. This is especially true when the fits and starts of the future workings of the political process are factored in. When capital items are connected with new programs the evaluation of the programs and their impact may be no mean task.

Public discussion of capital items is inhibited by the complex nature of capital planning. A proposed facility change is generally justified in terms of the program for which it is intended, in terms of the technical efficacy of the change and in terms of the costs involved.

The extent of such public discussion is also bound up with the fact that many capital budget items are not only large but also tend to be "discrete" and geographically localized in nature. Thus, for certain individuals or groups - generally geographically based - there is intensive interest in the issue. But for most individuals not so affected there is little or no interest, creating a very narrow public audience for the discussion. Most likely the only plane on which discourse occurs will be that of the cost of the project; and even then the issue may be the relation of the cost of that project to the entire capital program rather than the cost of the project itself. Operating budget issues, in contrast may affect diverse constituencies across the Commonwealth. The programmatic aspects may be as or more important than the financial ones; or the focus may be on the cost of the program itself and not merely the impact on the overall fiscal integrity of the state.

The fact that the operating budget tends to have higher priority and more resources devoted to it than the capital budget is, to some degree, a reflection of the status quo. The creation of the Commission and the issues it had raised presumably will create more interest in the latter. Nevertheless, there are still other factors which tend to have a negative impact on capital planning.

Generally speaking, planning resources at state agencies are meager; and the resources for capital planning tend to be more meager. To some degree this may reflect the fact that the political nature of decision-making in government operates against long-term planning. As noted above, given the prospect or risk of short terms in office, elected and certain appointed officials will not necessarily be concerned with the long-term effects of particular decisions. A corollary of this is that there are no great incentives for institutionalizing planning functions. There is no need to institutionalize an activity which serves no one's interests. Also, such activities can be expensive but the benefits are neither obvious nor immediate. This tendency is reinforced by the fact that agencies operate within a frame of very limited resources; the pressure is to apply these resources in a stop-gap fashion to stem or avoid immediate crises. There seem to be too many demanding present needs to afford the luxury of an activity that will not obviously satisfy one of them.

Another set of reasons for the limited availability of planning resources has to do with the fact that the ancillary or supporting resources are not available either. This means the capacity to collect, manipulate, and present data. Generally speaking the technical infrastructure in Massachusetts government for such activities is hopelessly inadequate and far less advanced than that of enterprises of comparable size in the private sector. Even if there were an active demand for these activities there are no technical resources to meet it.

In addition, data collection, manipulation, and presentation can involve large investments of capital in the form of equipment. Here too, the costs are immediate, but the benefits are long term. These benefits moreover, are generally not at the final service stage of a program but at some intermediate management or administrative stage.

There may also be strategic reasons why allocating resources to planning in general and capital planning in particular is not a high priority. Knowledge can be power. Those having access to information can use it as a tool for achieving their purposes or as a weapon for defeating others' purposes. It is a means for justification, for review and criticism, for defense and for control. Control of those means then becomes extremely important. Should the resources be in the management offices of the executive or should they be allocated to the secretariats mandated to oversee groups of allied programs? Are they better placed in the office of the secretariat or in one or more of the agencies within it? What about the relative distribution between the executive and the legislature? And within the legislative branch, what staff and other resources should there be and who should control it? The result of all these conflicting concerns may be that none of the participants gets those resources, for the threat of strategic advantage or disadvantage results in each of the parties neutralizing the other.

Finally, it must be recognized that long-range and comprehensive planning is a relatively new phenomenon in state government. Indeed, comprehensive and unified operating budgets only emerged in the first few decades of this century. Especially with regard to capital appropriations the area is relatively uncharted. This also means that there is a limited body of knowledge and limited expertise and there are fewer models which can provide justification or guidance for planning efforts.

Finally, planning, particularly capital planning, tends to be fragmented in Massachusetts. There is no clear-cut definition of responsibility for planning in the statute books, and practically speaking, the situation is even more diffuse than that. Responsibility is fragmented both horizontally and vertically. It varies according to the Secretariat because of what the statutes say, because of the particular relationship that any given secretary may have with the governor through and outside of Administration and Finance, and because of the importance of the Secretariat at a particular time. It also varies according to the agency within a Secretariat, again because of what the statutes say, because of the relationship of the particular agency head with the executive or with a particular interested legislator or legislators, and because of the resources the agency has. The seemingly centralized organization chart which

emerges from the statutes becomes much more diffuse when it is recognized that the Secretariats are of much more recent vintage and were in a real sense imposed on the pre-existing structure of agencies. To some degree the fragmentation reflects the diversity of processes whereby state agencies and non-state agencies gain capital projects and the funding of those projects .

SPECIFIC SYSTEMIC PROBLEMS IN THE CAPITAL PLANNING PROCESS

The Commission has isolated specific system characteristics and practices which produce the waste, inefficiency and faulty judgment discussed above. These are:

- (a) Lack of an executive agency capable of performing capital outlay review;
- (b) Lack of resources and expertise for long-range planning;
- (c) Lack of clear-cut policy decisions and long-range plans;
- (d) Lack of resources and ability to articulate needs, garner resources and implement plans;
- (e) Inability to assess a stated need in light of existing facilities;
- (f) The ability of agencies to secure appropriations for capital outlay projects without relationship to state-wide goals;
- (g) Participation by legislators exercising inordinate influence during the agency deliberation process;
- (h) A process for making decisions on capital projects which is often disorganized, haphazard, and irrational;
- (i) A hasty and relatively ill-informed review of the capital budget by the legislature;
- (j) The insertion of unevaluated projects into the budget on the floor of the legislature;
- (k) Lack of a unified, Comprehensive Executive Capital Outlay Request and Authorization.

Each of these is discussed below.

Lack of an Executive Agency Capable of Performing Capital Outlay Review

There is no executive agency which has either the mandate or the resources to carry out capital outlay review. Indeed the 1979 Governor's Management Task Force stated: "It is not clear which agencies are currently responsible for coordinating and analyzing capital outlay budgets."¹ In 1976, the Governor's Task Force observed: "There is no clear identification of responsibility for the coordination and analysis of the capital outlay budget..."² And a seemingly puzzled group in 1979 stated: "It is not clear which agencies are currently responsible for coordinating and analyzing capital budget outlay requests."³

As noted earlier, the only agencies which are in any degree responsible by statute for review of capital outlay decisions are the Budget Bureau within the Fiscal Affairs Division of A&F and the Bureau of Building Construction (BBC) within the Central Services Division.

The Budget Bureau has a brief and vague statutory mandate and is largely subject to the discretion of the Secretary for Administration and Finance. Practically speaking,

the Budget Bureau has played only a marginal role in the formulation of the capital budget, let alone capital planning.

Only one member of the staff at the Budget Bureau appears to have been assigned to capital outlay matters. That person's function is basically one of compiling the various capital outlay requests for presentation in the final budget document and is largely removed from consideration of any policy issues or in-depth analysis of capital outlay proposals.

Lack of Resources and Expertise for Long Range Planning

The BBC plays the only significant role in the capital planning process. The very limited staffing and expertise of the Bureau in this area has been evident, however, for a long time. One study done in 1972 concluded:

The LRP [Long Range Planning] designation is a misnomer, since little long-range planning is expected or accomplished. This 6-man group is a service unit controlled almost exclusively by A&F for whom they process project requests, evaluate sites and carry out other special assignments...⁴

Not much appears to have changed in this regard. Joseph Glynn, long-time head of the Bureau's Long Range Planning Section stated that he had "a clerk, two other people" and himself.⁵ His assistant was a registered engineer and did "planning in terms of the planning we are discussing here," and the other person was not a registered engineer. That person worked "in terms of compilation and putting this material into summary sheets" and did "go on site and look at the various locations."⁶

When asked to describe the implementation of current policy and long-range planning, Glynn remarked:

I certainly hope we are doing a better job. Years ago we had a former commissioner of A&F and he thought the only long-range planning the Commonwealth did was where they were going to lunch, so I hope we are better off than that.⁷

The focus at the Bureau is on cost and square footage and of priorities are defined through a haphazard process. When asked about the character of the section's review, Glynn, using a Department of Corrections project as an example, stated that the concern would be with the "program"; namely, "what size, how many cells, whether it's a medium, maximum release."⁸ The "initial program" had to be "approved by the respective Secretaries," Glynn said⁹; in other words, that kind of judgment wasn't in his section's hands. But then he added that his recommendation was in terms of "the dollar value...[and] if we agree this project is urgent or essential or long-range..."¹⁰. When asked precisely what was done with regard to a particular project, he stated that he made "a summary of all the requests" and used as a "starting point...what the fiscal condition of the Commonwealth is in terms of how much really can we afford or how much we think we can give you in capital outlay."¹¹

How would that judgment be made? They would look at "the description of the project...at the justification"¹² and consider "some verbal input" or information obtained at a talk "on site" although it "would not be written down."¹³ It was a matter of "looking at the long, [sic] looking at the priority, looking at the justification, looking at the projected costs..."¹⁴. Sometimes it appeared that BBC had no role at all in the deliberation process. Glynn, when asked, noted that there had been projects which had come into the proposed House Bill 1 "that the BBC never saw."¹⁵

To Glynn, the categorization of items as "urgent," "essential," and "long-range" (the statutorily required means for agency expression of priorities) was the way agencies, "do their own individual plans or long-range planning."¹⁶ He indicated a desire to "look at five years"¹⁷ as a planning period but conceded that he did not have the technical expertise "in long-range planning to do the evaluation, the checking back of the budget and planning from year to year to see how well the plans have been arrived at, how well they have been done, the budget expenditures"¹⁸. He also noted that such expertise resided nowhere else in A&F, the Secretariats, or agencies. The perspective on the agencies offered by Glynn was confirmed by inquiries at and about the agencies. For example, Joan Belle-Isle, the one staff person at the Department of Corrections (DOC) who had been responsible for capital outlay budgets, described the situation as follows:

Prior to Commissioner Hall [1975], each institution was for all intents and purposes an independent system. Program priority, both for general budget purposes and for construction or capital maintenance programs were largely set by the institution's superintendents and the superintendents by and large had backgrounds in either social services and have very little understanding of the brick and mortar kind of issues except to the extent if they have a roof leaking and now they need to have it fixed.

When Frank [Hall] centralized a lot of the administration of the Department, departmental priorities started to be set. It wasn't, however, until some three years later that enough of that groundwork had been laid that it was possible to pull in the capital projects as well. It was a very confusing kind of decentralization of authority. Everyone had their pet projects or lack of them and there was just no commonality about direction, what had priority, what didn't have priority, how projects were to be pursued or anything of that nature."¹⁹

After the centralization, the Department was "at the very least aware" of what its "shortcomings were" and pursued "the kinds of projects that were consistent with what the agency as a whole wanted to do." Time and effort could then be spent "dealing with institutions that were high on the agency's priority for improvement rather than relying on this superintendent's perception or impressions of what ought to be done there."²⁰ During Joan Belle-Isle's tenure the Department of Corrections capital outlay budget was prepared by the facility planning unit. By the time she left the Department, some efforts had been made to develop a capacity based on evaluation of past projects although only limited progress had been made.

Another former DOC planning staff member reiterated those points, stressing that other problems which have turned up at specific facilities were not as important as the Department's overall lack of planning. No long-term plan existed in the Department until a document called "DOC Goals and Objectives" was produced in 1976.

The lack of agency resources to do planning was not always a result of a general disinclination on the part of an administration to make such resources available. In the case of the Department of Youth Services, for example, one staff person suggested that the agency was refused money for a comprehensive facilities study by A&F because there were "political problems": there was a lame duck commissioner, the program was unpopular, and treatment policy had changed radically over the years and was still in transition. It was also suggested that this was in sharp contrast to another agency (DMH) which received money for a study that they didn't even request.

The general lack of resources and expertise at the agency level meant that even if the BBC were capable of making use of it, information relevant to the planning of projects would not be forthcoming from the agencies. As Joe Glynn put it, "we have difficulty getting the complete total information we would like to have..."²¹ "[I]deally...everyone would like to see it [the initial submission] done in terms of square footage, we would like to see it done whether it's a schematic layout or in-depth description of the work, but I think the agencies don't have the expertise, they don't have the resources to arrive at that..."²² And, indeed, it was only recently that a capital outlay request which was "incomplete, not very accurate or put together well"²³ was not recommended "through A&F or the Governor."²⁴

Lack of Clear Cut Policy Decisions and Long-Range Plans

From this picture, it is hard to isolate precisely who was responsible for making policy decisions and whether there was any clear-cut, let alone long-range, policy for forming those decisions. Glynn was asked again whether there was "any body,...an agency which makes...[the decision]" as to which projects among many should be done "and where and when and is that the right building at the right time and place." This time Glynn opined that it was "a joint decision" involving the "Budget Bureau, the respective secretariats, BBC, A&F."²⁵ Each one of them has a "specialty."²⁶ A&F's concern was "greater...than just the financing" but involved the responsibility "to carry out the program, the capital outlay program."²⁶ It was the Secretary who "has to pick and choose priorities. This is the first job, so we have to rely on essentially... he's head of educational affairs...[W]e have to rely heavily on the secretary's recommendation..."²⁷ The "final decision has to be made by

A&F" but A&F did "rely very heavily" on BBC's "professional input in terms of cost..."²⁸

Lack of Resources and Ability to Articulate Needs, Garner Resources and Implement Plans

Even in those areas where the BBC had explicit responsibility and attempted to exercise it, the effort tended to fall short of the mark. In part this was because of the inability of agencies to articulate these needs, and in part because of the lack of information supplied by the agencies. Glynn reiterated the fact that the Bureau had the "primary responsibility for developing cost estimates that go to the legislature."^{28a}

At this stage of consideration the "square foot cost...is the only information you have available."^{28b}

In some cases when there was a cost estimate from the agency and "it's a very specialized request" he might "[accept] that estimate... sometime because of the special involvement."^{28c}

He was not surprised to learn that "individual agencies arrive at...[their] estimates by calling contractors or a contractor with whom they have worked in the past to ask for a rough estimate"^{28d}; indeed, that was "a very good idea."

Even where long-range plans may have existed, their existence did not necessarily mean that they could have or did have any role in forming decisions. For example, some seven years or so after its establishment, the Massachusetts Board of Regional Community Colleges, issued in May 1967, a so-called master plan aimed at producing "Access to Quality Community College Opportunity." Prepared by Dr. Donald E. Deyo, it was supposed to serve "as a basic policy-making framework for the Board through 1975."^{28e} It "set out in logical form goals and objectives, the status of the colleges in 1965, curriculum descriptions, projected enrollments and priorities, space and capital needs...and the role of the central office in the system."^{28f}

By 1975 a preliminary study suggested that the Deyo Report was "out of date," that the factual base "was obsolete," that the priorities "had changed" and that some of the "strategies for implementation" were "no longer applicable." Detailed recommendations for data collection and goal and priority setting for a new master plan were provided. No such master plan was ever prepared and it appears that none of the data collection efforts were carried out.

The Deyo Report itself appears not to have functioned as a master plan. Several knowledgeable participants have characterized that master plan - and, for that matter, similar "plans" by other public higher educational institutions or agencies - as "if-I-had-my-druethers" or "wish" lists. The suggestion is that the document was never seriously considered as a framework for judgment, but rather to justify post-hoc or rationalize judgments made on other grounds. Indeed, to

date, the Commission has been unable to obtain a copy of that plan, from the MBRCC or anyone else, a fact that suggests the lack of seriousness with which the plan was viewed.

The reason for this apparent irrelevance of the Deyo master plan to the planning process may be ascribed to the lack of staff and resources available to the agencies, including the community colleges, to do that second level of planning necessary to implement a very general master plan for a higher education system. For example, the report on March 1958 of the Special Commission on Audit of State Needs, entitled "Needs in Massachusetts Higher Education" proposed the establishment of a state-wide system of community colleges. It stated that:

The exact locations of the proposed regional community colleges, and the exact definitions of regions should be left to the Board, after careful professional studies of the potential enrollment and special educational needs, including the needs of business and industry, in each part of the state.²⁹

The report suggested eight regions which most likely would be served by the new system. Governor Furcolo's July 1, 1958 Special Message to the Massachusetts Legislature entitled "The Responsibility of the Commonwealth in Higher Education" referred generally to:

such professional staff as is necessary shall prepare an overall plan to meet the need for post high school community college education in the entire state

and that the Board would

establish and maintain regional community colleges at suitable locations in accordance with the overall plan.³⁰

The message noted nine likely areas to be served by the colleges.

By July 1961, the Board was to state in "A Progress Report" that several sites had been selected. Its overall plan was to locate colleges "so that they [would]...be accessible to the homes of 95% of the high school graduates of the state." But it had:

proved desirable to establish a college in a community whose needs have been surveyed by a volunteer survey committee, in one that does understand and want a college, and is something more than enthusiastic about working to provide the many small services which amount to real community support.

By this point, four new colleges had been established but there was no indication of what relation they or any future schools would have to the eight or nine regionally-based schools proposed earlier. To date, fifteen community colleges have been established. The only overall plan was the Deyo Plan prepared in 1967. Little professional planning within that framework appears ever to have been done either through the Board's own staff or on a consultant basis since resources were simply never available for such planning. The data for decision-making were derived from the surveys by volunteer committees which seemed more or less closely linked with chambers of commerce. The "surveys" which the

Commission has reviewed seem more like promotional documents for and from the regions seeking a community college; they contain numerous, brief expressions of local business and community support and letters from prominent public officials, particularly local legislative representatives. It seems likely that in the initial stages decisions about whether, where, and what kind of college was contemplated were based on some ad hoc judgment derived from those surveys. The direct concern for expressions of "interest" or "support" most certainly offered a clear opportunity for legislative lobbying at that stage. Such lobbying wasn't and isn't necessarily inappropriate; but the lack of a framework of criteria or priorities most certainly made improper influence that much easier.

To the extent there is interchange between the BBC and the agencies, other decision-makers are not necessarily beneficiaries of the information exchanged or the understandings reached. There is no agency-BBC planning liaison prior to the submission of a request by an agency. One staff member indicated that there used to be annual visits to agencies to discuss plans; but apparently changes in administration and agency philosophy made planning difficult. According to Glynn, "the oral interchange...between the BBC and the individual department" may not be "recorded as such" 31 and therefore, is not available to the legislature. This means that the full extent or precise nature of the project is merely a matter of an understanding not available to those otherwise responsible for evaluating and approving a project. It also may contribute to disputes and delays at an advanced stage if personnel at the Bureau or the agency change or if there are changes in agency philosophy.

Inability to Assess Stated Needs in Light of Existing Facilities

The Dober report had included within the suggested format for a Community College master plan a survey of space utilization which had been discussed at length earlier in the report. Such a survey, in conjunction with other surveys, including a budget analysis survey, was intended to guide policy formulation and evaluation.

The report stressed the importance of such a survey:

Space is an institutional resource whose presence or absence can affect significantly institutional goals and objects.

It was a means to:

establish priorities in capital funding;...justify operating and maintenance budgets;...help measure 'accessibility';...identify special characteristics of programs, buildings, colleges, or the system as a whole; and...help bring, over a period of time, balance, in the availability of physical resources at the individual colleges.

But although some general reports submitted on an annual basis to the federal government (the so-called HEGIS reports) described the "size, distribution, and type of space", the "actual utilization of space" was "not recorded

systematically." 32 As to evening programs and other educational services programs which were deemed to be of increasing significance, the "[i]nformation on their particular space needs, if any, [w]as missing." 33 Indeed, the consultant noted that it was:

not...able to carry out a more thorough study of the physical facilities because some of the information provided does not conform to general experience, and thus raises questions about the validity of the information" which they had not had time to check. 34

This lack of basic data gathering is reflected at the BBC stage of review. According to Glynn, information as to what the agency "want(s) to do,...how much space they need" is "not as a rule" forwarded to him. 35 Only when the architect starts work might that that kind of information be available.

The problem is a long-standing one of which many administrations were aware. The Governor's Management Task Force noted in 1976:

Capital request forms ask indirectly for information from which space per capita might be calculated. However, no data are provided on present space utilization standards available as a guide... 36

And in 1979, the Governor's Management Task Force observed:

[T]here is little evidence of attempts to coordinate space requirements within a comprehensive plan. 37

Thus, it appears that the process of agency formulation of proposals reflects less a systematic evaluation of needs in terms of sets of criteria or goals informed by policy judgments than it does an ad hoc, negotiated, and strategically oriented process.

The Ability of Agencies to Secure Appropriations for Capital Outlay Projects Without Relationship to State-Wide Goals

Unlike operating funds, capital outlay decisions seem to be a case of "on/off." Once the spigot is on, cost control seems minimal. Because capital outlay represents bonded debt, not immediate tax revenues, the usual political pressures are lessened. Control of project administration costs does not appear to be high on the users' agendas, as evidenced by the fact that several agencies pay for in-house engineers from operating funds, when they could have conceded all capital operations to the BBC and consultants, paid from the A&F account and capital outlay, respectively. The reason for this may be that the extra project costs are off-set by the benefits of direct agency control over a project.

Perhaps the highest agency priority is acquisition: getting sufficient facility space to operate programs, even if that space does not properly meet program needs. If, for instance, circumstances have caused a project of considerably lower priority to an agency to have an excellent chance of making it into through the capital outlay process, the agency would be unwise to refuse the unwanted benefit; they might be seen as ungrateful. A more extreme case occurs

when an agency is pressured into accepting a facility or project which runs counter to agency needs, generally through legislative influence. The story of J Building at MCI Concord is one such case. (See this Report on Concord/Danvers/Gentile).

Another factor which may come into play at the agency level is "equity" or the "fair share." For example, at the state colleges, project requests generally originate at the institutional level. The Chief Engineer of the Office of State Colleges is responsible for a series of informal meetings and one formal meeting with the president and other officials of the colleges. The Chief Engineer then assembles the college requests and prepares a priority list. It is based on his own experience and knowledge and a "feeling" for what the Trustees (of the Board of State Colleges) will approve. Highest priority tends to be given to those projects already in progress, i.e., construction funds, then design, then planning, etc. The list is then formulated on an "equity" basis. That is, projects are listed in groups of ten with a project for each college being in each group of ten. A given college's projects may be high in some groups of ten and low in others.

It appears that this equity notion and probably a careful gauging by the Chief Engineer of the preferences of participants whose approval is required smooths the process of approval. The list is approved by a "Council of Presidents" with no or minor changes and is generally passed by the Board of Trustees without change. To some degree this may reflect confidence on the part of presidents and trustees in the "disinterestedness" of the Chief Engineer.

Precisely what this informal process has to do with any formal plans of a college or state college system-wide plans is not clear. Planning funds were made available in 1965, 1966, and 1968 for a system master plan but it is not evident that any attempt to update such plans was successful. So, for example, the Worcester State master plan called for a classroom and lecture hall building to be completed in 1978, but in the fiscal year 1981 budget this item was Long Range item number 45 behind several repair projects. Of 54 projects considered in fiscal year 1981 only two or three were deemed likely to be approved.

Participation by Legislators Exercising Inordinate Influence During the Agency Deliberation Process

Another factor which enters into the agency's decision making process is the degree and kind of legislative intervention which occurs during deliberation. The intervention is not inherently bad but affords the opportunity for abuse, which has indeed occurred. From the perspective of the agency, the issues of corruption, favoritism, or fair competition among those seeking to influence the

agency from without are of lesser concern than, and may readily be subordinated to, the pursuit of further acquisition. A legislator may have any of three motives for pushing departmental projects (at this and at subsequent stages): (1) constituent support of the program; (2) pork barrel for the district; and (3) personal gain, resulting indirectly from the choice of a certain site or consultant. The agency need not concern itself with the legislator's motives (unless there are questions of personal gain for the agency person), but rather only with his ability to deliver and the extent to which the legislator's needs will require variations from the Department's needs, particularly as to siting or forcing a shift in priorities (e.g., institutional construction vs. shift to community-based facility). Even these problems may be offset by the expectation that acceptance of a legislator's agenda today will produce support for the agency's agenda tomorrow.

A Process for Making Decisions on Capital Projects Which is Often Disorganized, Haphazard and Irrational

The typical agency product as it appears on the capital outlay forms is schematic and offers neither a strong sense of agency priorities nor much hard supporting data on the projects themselves. This lack of rationale and of information leads to a decision making process which is often disorganized, haphazard and irrational.

For example, staff people at the Regional Board of Community Colleges suggested that the cost of construction was basically a "guesstimate." The figures on the CO-1 capital outlay form were characterized as "a numbers game." Not surprisingly, there is a general tendency to make high estimates in anticipation of legislative changes. The tendency to make approximate estimates may also reflect a sense that too much accuracy or detail is not worth the trouble since the legislature will make whatever changes it wants anyway.

In addition to the dollar sum sought to be authorized, the capital outlay form also contains language describing the project-language which becomes crucial, according to BBC staff, in describing and limiting the scope of the project. The language is frequently cryptic, in order to encompass the agency's program with some flexibility. The cryptic language may be taken so literally as to lead to arbitrary limits or to the need to go through the once-a-year budget cycle again. Or it may describe the project with so much flexibility as to cause problems later on.

For example, in one appropriation for a community college, there was a reference to a physical education building in compliance with the master plan. Apparently the school wanted to include a swimming pool in the project but the BBC objected that the language of the appropriation wasn't specific in that

regard and did not include the pool. The problem dragged out for years with one administration supporting the inclusion of the pool and a subsequent administration arguing against the inclusion. This was characteristic of a more general post-appropriation procedure (see below) which involved successive administrations, as someone put it, "changing the rules of the game," attempting to make changes far into the advanced design stage, thereby causing significant delay and substantially raising costs. The equally frustrating and almost ludicrous examples discussed earlier - those at the Gardner State Hospital and the Northeast Correctional Center-are also cases in point.

This causes considerable tension between the Bureau and an agency like the Department of Corrections. In describing the BBC review relative to Department projects, Joan Belle-Isle described it as ideally including both technical and policy review. It would depend upon:

the extent they knew the institution or the situation well enough to be able to do it on that level. To the extent that there were many institutions that hadn't been seen in a long time and were aware of their current situations, then they tended to be more policy review than technical review. 38.

There were numerous disputes over the Bureau substituting its policy judgment for that of the Department. As Belle-Isle put it, "On many occasions...it caused just incredible lengthy problems that had to be negotiated, worked out. Meetings that just went on forever." 38a Part of the problem can of course be ascribed to the agency. Another former Department of Corrections staff member noted that the lack of coherent policy statements in writing, for example on sentencing practices, resulted in a lack of a rational basis for facility design.

These time consuming and expensive struggles over construing legislative language can be traced back to the lack of definition of the project. Joe Glynn stated that once a project was authorized, it was the responsibility of his office to interpret "the legislature's language in the capital outlay budget at the scope of a particular project." 39

Starting with the legislative authorization for the project, which would run "probably four, five, six lines" 40, he would look at the language of House Bill 1, "at the back-up for the particular project, the material that was submitted." 41

When asked how he would determine the scope of, say, a gymnasium project for a school which might run anywhere from 1 to 10 million dollars, Glynn replied that he would:

probably look at the last two or three done and see price range and see how many students they have and if the usage is approximately the same, I would have to fall back on of where we are going...You know, really and truthfully. So, we do know the price range, we may be talking two, two and a half million roughly. 42

Certain information which would be extremely important in determining both the need for a particular project, its impact on future (operating budget) costs, and hence the cost-effectiveness of the project was either not available or was simply not used.

The requirements discussed in "Schematic of Capital Outlay Process" appear to have been honored in the breach. Indeed, the Governor's Management Task Force of 1979 noted that no formal use was made of the data on anticipated changes in operating costs, personnel requirements and revenues related to construction of proposed facilities. There was an absence of standard analytic procedures for evaluating the data that existed. As a result there was no way to use such data "to help determine the need for the requested facility, identify possible alternatives and establish appropriate funding priorities."

This was by no means a new problem, for the task force under the previous Governor stated in 1976:

Capital request forms ask for estimated changes in operating and personnel costs as well as revenues expected to result from approval of a new facility. This is important information, but receives only informal use...43

The problems created during the "executive" phase of the budget process spill over into and can be compounded during the "legislative" phase. The story of J-Building at MCI-Concord, described at length in the Section on Concord/Danvers/Gentile, is suggestive in this regard. The project, which stretched out over two decades, was characterized in its early phases by shifting priorities which resulted in long delays in that project and threatened delays in other related facilities. The separation of funding for design and for construction, in combination with the substantial increase in costs, contributed to the failure to build the structure as designed.

In its later phases, the project was characterized by continual turnover in personnel and in policy which contributed to the abandonment of the design and a waste of the fees expended on it. These further contributed to delay and additional increase in project cost. But during the later period the situation was exacerbated by pressures exerted by the designer who, in effect, participated in discussions as to whether and how such a project should be funded. These pressures are especially striking in light of the reluctance of at least one and perhaps two Corrections Commissioners to have any project at all.

Further distorting the planning process was the apparent alliance of the prospective designer of the project with a powerful legislator. That took the form of active involvement during the agency phase of project planning and active intervention at several points during the legislative process.

A similar tale has been told with regard to the development of Holyoke Community College. That the new facility was ever built or at least when it was built is interesting in itself. The long term result was the location of two community colleges - Holyoke and Springfield Tech - within a few miles of each other. The history of deliberations on both those colleges is a story of seemingly ad hoc judgments based on the various tugs and pulls of communities, politicians, and other interested parties. Such pressures can be expected. They cannot be rationally assessed, however, when there is no framework for a clear policy and no set of priorities that can offer guidance and justification for choices. In the course of the hastily called meetings after the fire at the temporary Holyoke facility, Board Chairman Chase could report that Senate President Maurice Donahue (of Holyoke), House Ways & Means Chairman Anthony Scibelli (of Springfield), and Representative David Bartley (of Holyoke, later to become President of Holyoke Community College) had assured him that money for construction of a new Holyoke Community College campus "would be forthcoming, over and above money needed for the other colleges." The ability of such key legislators with a strong interest in the project to seemingly commit the legislature well in advance of any deliberation is disturbing, if real, and troubling even if it was a matter of perception.

A Hasty and Relatively Ill-informed Review of the Capital Budget by the Legislature

However disturbing such substantial influence by legislators may be, the situation would seem less serious if there were institutional and procedural checks for scrutinizing the recommendations that result. Such checks, however, appear to be absent from the current system. As noted earlier, it is the operating budget, not the capital outlay budget, which has greater significance and which draws the lion's share of attention by participants. The capital outlay budget typically is not considered until very late in the legislative session; indeed, it may not be passed until well into the next fiscal year. The time for review by the respective ways and means committees is substantially less than that given to the operating budget and the staff also is considerably smaller.

The documentation offered for the capital outlay budget by the Executive, although voluminous, is neither illuminating nor readily penetrable. There is no clear set of policies - programmatic or fiscal - against which the recommendations are set on the A&F, Secretariat or agency level. Any legislator relying on his own resources and limited staff would find it difficult to wade through the mass of unrelated and poorly articulated material. The issue is not necessarily a lack of data but the lack of meaningful data.

Of course, similar problems tend to plague legislators' attempts to evaluate the operating budget or other legislation, for that matter. And as in those cases they are forced to rely on the judgments and recommendations of their colleagues through the committee system. This means looking to the respective ways and means committees. But after dealing with the operating budget, the community turns its attention to the fiscal impact of other proposals on the budget. The quality of evaluation and documentation on the capital budget is thus substantially different from that provided for the operating budget.

Moreover, according to the rules of the legislature, particularly those of the house, the information required to be presented on the capital budget and its format are left largely unprescribed. This means that a meaningful comparison of the house and/or senate versions with the governor's recommendations and the implications of the changes is very difficult to achieve. Practically speaking, the time span available to legislators to absorb whatever information is available before deliberating on the capital budget and casting a vote on it can be very brief indeed. During the most recent session, the senate version of the capital outlay budget was made available to legislators, deliberated and voted upon in a matter of hours. The situation is further exacerbated by changes made at the last minute either in committee or on the floor of either chamber, changes that might seem small, but which may involve tens of millions of dollars in the long run. There generally is neither the legislative expertise nor, practically speaking, the opportunity to debate and cast an informed vote when projects are presented. Moreover, in this as in other situations, the prestige and power of particular committee members form a sufficient justification, rationale or, perhaps, excuse to accept the proposal proffered.

The final legislative check on the capital budget prior to the governor's decision is the conference committee. Depending upon the circumstances and the incentives involved there may be a tendency either to retain or to eliminate differences in the bills. However, the perception tends generally to be that there is enough pork in the barrel for two. Although the bill as a whole may be important to few legislators, a particular provision, probably because of its local character and impact on the community, may be of considerable importance. Unless the issue involves an item such as a prison, certain mental health facilities or certain kinds of housing, criticism is probably to be expected only if the facility is not obtained. If one is a prospective loser, the better part of valor may be to wait one's turn and be next on line for the succeeding facility.

The entire process involves a multiple series of negotiations among all the parties involved. It is probable that facilities directors, program

administrators, engineers and department heads all lobby various items with cabinet secretaries, A&F, the Governor, Ways and Means members and staff, as well as individual legislators, depending upon their connections and their insulation from criticism by parties higher in the administration who disagree with their priorities. Most departments also have legislative lobbyists to push the official version of their budget. Private interest groups (and private individuals such as actual or would-be contractors) and department constituent groups may also push items that further their own agendas.

It should be reiterated that there is nothing necessarily insidious about such a procedure. If, however, the entire process is characterized by lack of or limited access to information, or if there are limited opportunities to evaluate it, or if it is subject to improper influences from specially situated, interested, or powerful legislators or their allies, then the formal system can be completely subverted.

Occasionally, even when relevant information has been available to the legislature, the information seems not to have affected its decision whether or not to fund a project. As Joan Belle-Isle described it:

My impression is that it [such quality of information] had little effect. The legislature was more interested in broad definition of 'I got a leaky roof' or 'Public Health tells me that the ventilating system doesn't work.' They were not particularly interested in finding out 'how many fans I needed to get ventilating at Walpole to function.' 44

The same seems to have been true of the broader new construction projects:

New construction again, it was the sort of thing that we were concerned about and where, they tended not to be interested in cellblocks versus housing units versus 'you feed them in a small dining room' versus 'you feed them in a large dining room.' Their concerns tended to be just the very broad kinds of conceptual kinds of issues. 45

Indeed, the interest on the part of A&F itself may have been even less than that of the legislature. Belle-Isle observed that she had "never experienced a request directly from A&F" 46 for greater detail prior to a capital appropriation.

Given this coarse net of review, projects of lesser import could easily slip through. So Belle-Isle noted that at least before the centralization in the Department:

An institution superintendent would decide if he would pursue a capital outlay project, he would decide what project and frequently do his own lobbying for that project with the Legislature. Now, it might have been a pet project of his and the context of the entire project was so low on any kind of priorities as to be one that one would ordinarily simply ignore. 47

The Insertion of Unevaluated Projects into the Budget on the Floor of the Legislature

As noted in the section describing the capital outlay process, there are means by which funds may be allocated to projects largely outside the normal process. These funds are made available by virtue of provisions in capital outlay bills for lump-sum accounts. These accounts involve the authorization of expenditures for a broad class of projects. According to the authorization, the selection of a project and an allocation of funds is done administratively by the BBC in conjunction with A&F and typically, the house and senate Ways and Means Committees. During the past twelve years a total of 56 such authorizations have been made, authorizing almost \$130 million in expenditures for unexpected contingencies (design and construction), feasibility studies, special repair programs, energy conservation projects, fire protection improvements, handicapped renovations, unexpected contingencies (in land acquisition), demolition and planning funds, sewage treatment facilities, and air pollution abatement facilities.

The authorizations are typically one to a few lines in length, of which only a line or so is concerned with actually describing the class of projects being authorized. Only in the case of renovations for the handicapped is there reference to a statutory standard and that concerns itself not with criteria for project selection but the details of code-like requirements.

In many instances (sewage treatment, planning and demolition, air pollution abatement, fire protection improvements) the only direction is that projects are to be allocated by the Director of the Bureau of Building Construction with the approval of the Commissioner of Administration. In the case of land acquisition the allocation is by the Commissioner with the approval of the governor.

In only two instances are any specific project criteria offered and, strictly speaking, they are restrictions on the amount of money which may be spent, rather than what it may be spent on. The land acquisition provision limits the purchase price to a figure related to the land's assessed valuation. The unexpected contingency fund provision limits the allocation to:

a percentage of the amount appropriated for the project in this or any other act, said percentage to be not more than five percent plus the percentage increase in the cost of building construction as determined for the period involved by the commissioner of administration from available building cost indexes 48

In three cases, the legislature through the committees on ways and means plays some role in the allocation process. Copies of the allocations for unexpected contingencies must be "filed" with those committees. Similarly, "an approved schedule" of feasibility studies must be "filed" with the committee

"fifteen days prior to the initiation of any study." The strictest provision - at least on its face - is that pertaining to maintenance and repair funds. One version required that:

the need for said repairs shall have the prior verification by the house and senate committees on ways and means⁴⁹

and another required that the allocations be:

based upon schedules approved by the house and senate committees on ways and means, a copy of which shall be deposited with the commissioner of administration and shall be expended upon recommendation of the said commissioner and certification by the house and senate committees on ways and means.⁵⁰

The actual and precise manner in which funds are in fact allocated to projects remains largely veiled in mystery. As with many other activities it is very difficult to determine who has and does exercise responsibility for such decisions. It appears that the process of allocation is one which is not characterized by any formalized procedures or standards, let alone written ones. Selection seems to be a haphazard process with the notion of first-come, first-served being the rule of thumb. It is not at all clear that there is any definition of how much can and should initially be allotted to a project or by how much it may be supplemented. There is no evident criterion which a decision to provide funds to projects otherwise authorized (except in the case of the unexpected contingency fund) and those which will be started by such an allotment.

In a number of cases there have been several allotments to and then subsequent withdrawals of part of the allotments from a single project. Such multiple changes go beyond the question of funding different phases of the same project. Depending upon the fund, relatively disproportionate sums are given to one agency or Secretariat. Whether this a result of some plan or consistent set of intentions or the consequence of random decisions is not obvious.

Study funds are intended to be for "project feasibility studies, environmental impact reports" and for "preparation of preliminary plans and descriptive specifications" (and most recently "project programming"). Over the years, however, allocations from such funds have typically not gone to projects which could be described in that way. Rather, the language in every authorization appears to be linked with the fulfillment of the Director of the BBC's responsibilities under (currently) chapter seven, section six of the general laws, namely "the maintenance of state-owned property [which] requires...improvements to prevent deterioration or costly future repairs." Indeed, several staff people at the BBC have indicated that the Bureau until recently has had the resources to pursue its mandate under that statute. But, since 1968, study funds have been authorized eleven different times. ⁵¹

There has been very little attention drawn to these various funds; perhaps they are individually small (though cumulatively large), apparently serve uncontroversial purposes and are handled in a non-public manner. However, the Governor's Task Force of 1979 did remark that the unexpected contingencies fund was not adequately monitored to "identify the rate of consumption of such monies during the course of a project" so as to "reduce unexpected cost overruns related to capital outlays." 52

The enormous diversity and complexity of capital facility projects which are carried out by the state government, supported by it, regulated or are given the state's sanction and require its review, were discussed earlier. According to the particular kind of project and the nature of its funding, the impact on the state finances is large or small, direct or indirect, long term or short term. In all cases, because of the state's involvement, there is a relationship between and among each of those projects and important state programs and policies, whether those are highly articulated or not. Even the effective execution of projects in a given geographical area may be dependent on the scope, nature, and timing of the phases of projects by several public agencies. In spite of these very important interrelationships there is no state agency with the mandate or ability to take cognizance of those relationships, to act upon them or, at least, assure mutual awareness and a minimal coordination of the activities of participants.

The lack of coordination and review in the financial area is reflected in the lack of a unitary budget as presented by the governor to the legislature. Only capital outlay for state agency projects is included in the Governor's bill. Moreover, it is the practice of the legislature to separate out transportation projects which are evaluated at least initially by the Transportation Committee, not Ways and Means. County projects are treated by the Committee on Counties. Authorizations for projects overseen by DCA are treated separately. Each of these goes through a separate process; the decisions are made at a different time from the Governor's capital outlay appropriations bill and without an obvious consideration of the relationship among the various bills.

In conjunction with the absence of any systematic means for collecting information on the scope, nature and progress of various public agencies, this legislative procedure means that there is no effective way to evaluate the current status of projects or the fiscal impact of those project authorizations. This means that capital projects, particularly those for state agencies, tend to accumulate while they disappear from the consciousness of both legislators and the public, but not from that of potential bond holders.

A nominal limitation on this problem is the expiration after five years of capital outlay authorizations for state agencies (others can be more open-ended.) However, the review of such authorizations at or near their expiration date appears to be perfunctory and renewals are routine. The Governor's Task Force of 1979 noted, for example, that the justification for renewing capital appropriations had not "taken into consideration increases in construction costs or changes in building codes." 53

Finally, there is no specific or clear-cut statutory definition of items which should be included in a capital outlay budget; it is a matter of administrative practice. This can and does result in items being included in the capital budget which should not be so included. The Governor's Task Force in 1976 observed:

Many projects included in this (capital outlay) budget cannot be classified as capital expenditures. Normal maintenance expenses and other noncapital items should be covered by current operating budgets, not financed by long-term debt."54

In almost exactly the same terms, the Task Force in 1979 stated that:

Many projects are incorrectly included in the capital outlay budget. These short-term items are thus financed by long-term debt instead of paid for - as they should be - by the current operating budget.55

GUBERNATORIAL AND LEGISLATIVE REVIEW OF THE MAIN

CAPITAL OUTLAY BUDGET

It is the responsibility of the Governor to prepare a capital outlay budget and present it to the legislature . It is then reviewed by both legislative branches, which may add, increase, delete or reduce items. Upon receipt of the final legislative version, the Governor may delete or reduce (but not add or increase) any items in that version. Finally, the legislature may, by a two-thirds vote, override those deletions and reductions.

The Commission has reviewed this process as it occurred over the past 14 fiscal years (1968 through 1981). This review provides still more empirical evidence of the dearth of planning and coordination that goes into the capital outlay budget. Dramatic changes have occurred in the budget after submission to the legislature, indicating that either the executive or the legislature (or both) have failed to approach the process in a systematic fashion. Legislative additions to and deletions from the Governor's proposals from 1968 to 1981 represented a change of 40.6%. When the governor has chosen to exercise his power to delete or reduce items in the bill passed by the Legislature, the changes have been small. The Governor's control of the capital outlay budget after submitted to legislature is thus seen to be minimal.

The present format for the Governor's recommendations involved labelling them according to whether they were "urgent" (U), "essential" (E), or "long range" (LR). This procedure was first used in fiscal year 1977 as a result of changes in statutory requirements for budget presentation. Before that time capital outlay requests by the Governor took the form of one or more separate submissions without any distinctions among the items sought. Indeed, in fiscal years 1973 and 1976 there were no gubernatorial requests at all.

It is clear that the currently used "urgent" category involves those items to which the Governor expects the legislature to give most serious consideration. (NOTE: This may not correspond to what the Governor, the Secretariats or individual agencies regard as worthy of serious consideration for that fiscal year. For fiscal years 1977 through 1981, the Governor recommended a total of \$1,864.3 billion in "urgent," "essential," and "long range" items; \$457.0 million (or less than 25%) of this was in the "urgent" category. By comparison, individual agencies sought \$2,393.6 million in projects of which over 50%, namely \$1,223.0 million, were in the "urgent" category.) Thus, for fiscal years 1977 through 1981 the Governor requested a total of \$457.0 million in "urgent" items (an average of \$91.4 million per year). This can be compared with the total request for the corresponding period of \$1,864.4 million (an average of \$373.9 million per year). Indeed, of the \$457.0 million in urgent items approximately

\$42 million were deleted by the legislature (a reduction of about 9.2%). The largest cut in "urgent items" by the legislature was in fiscal year 1981 when approximately 25% (\$21.6 million) of the \$86.3 million in requested items was deleted. By contrast, a very large fraction of "essential" and "long range" items are cut by the legislature. For example, in the fiscal year 1981, 94.7% (\$141.6 million out of \$149.6 million) of "essential" items and 98.6% (\$338.0 million out of \$342.7 million) of "long term" items were cut by the legislature.

This suggests that the current "urgent" category corresponds to the single category of requests presented by the Governor prior to fiscal year 1976. Thus, from fiscal year 1968 through fiscal year 1975 (including two years in which there was no main capital outlay bill) there were a total of \$924.3 million in requests by the Governor of which 6.1% (\$56.8 million) was deleted by the legislature. By far the largest deletions occurred in fiscal year 1975 when 21.2% (\$37.7 million out of \$177.7 million) of the Governor's request was rejected by the legislature.

If the "urgent" category is treated as comparable to the pre-1976 fiscal year requests, then of a total of \$1,381.3 million in requests, \$99.1 million (or 7.2%) was eliminated by the legislature.

The relatively small fraction of reductions by the legislature does not, however, mean that the final budget appears basically as the Governor requested it. Rather, substantial sums have been added by legislators, which never appeared in the proposed budget for that year. For recent years, this means that the item did not appear in any of the "urgent", "essential", or "long range" categories. Determining the precise scope of such additions is difficult since a comparison of each purported new item must be made with all proposed items. Nonetheless the Commission believes that the following findings are substantially accurate.

From fiscal year 1968 through fiscal year 1981 a total of \$462.2 million in new items was added by legislators to the requests of the Governor. If we take the currently used "urgent" category and the previously used single category as indicators of serious gubernatorial requests, this means that \$462.2 million in additions were made to the initial \$1,381.3 million in serious requests, an increase of 33.5%. For the period before fiscal year 1977, there were \$196.7 million in additions to requests totalling \$924.3 million (a 21.3% increase); for the subsequent period there were \$265.5 million in additions to requests totalling \$457.0 million (a 58.1% increase).

Using the same indicators, legislative additions and deletions for the entire 14 years represented a change of \$561.3 million in comparison to initial gubernatorial requests of \$1,381.3 million (a change of about 40.6%). The change

for the pre-1976 fiscal year period was 27.4%; that for the subsequent period was 67.3%.

These figures are in large measure reflected in the capital outlay bills voted by the legislature for submission to the Governor. For the entire period, the amount so voted was \$1,840.0 million compared to initial gubernatorial requests (including "urgent" items only) of \$1,381.4 million--a difference of \$458.6 million. This represents a net change of 33.2%. This larger final legislative budget also reflects a different "mix" of items.

Less dramatic changes are effected by the Governor after submission to him of the bill voted by the legislature. During the 14 year period, governors cut \$103.2 million from the \$1,737.5 million voted by the legislature. Of the \$103.2 million, \$85.5 million were made by a complete veto of items and \$16.8 million by reductions in the size of the items. However, there appear to have been no cuts in fiscal years 1968 through 1972, and there were no main capital outlay bills at all in fiscal years 1973 and 1976.

However, for every year after 1973 in which there was a bill passed by the legislature, the Governor did exercise his power to veto or reduce items. Thus, for seven capital outlay acts passed in fiscal years 1974 through 1981, the \$103.2 million in gubernatorial cuts were made in the first two years in which the Governor exercised his power to veto or reduce; in fiscal years 1974 and 1975, the Governor cut \$60.2 from bills voted by the legislature totalling \$295.5, corresponding to a 23.3% cut. In fiscal year 1974 alone, the Governor cut the bill presented to him by 43.9%.

Legislative overrides of gubernatorial cuts are rare. The only record of such an override found by the Commission for the 14 year period was for fiscal year 1975, when the legislature overrode \$18.3 of the \$22.6 million in vetoes and reduced items. Thus, in the pre-1977 fiscal year period there were \$35.8 million in legislatively sustained gubernatorial cuts.

SOLUTIONS TO SPECIFIC PROBLEMS:

LEGISLATION PROPOSED BY THE COMMISSION AND ENACTED INTO LAW

The Commission has submitted proposals to meet the needs described in the foregoing sections. The proposals seek to provide expertise and resources for the comprehensive and coordinated planning and completion of capital projects that do not now exist. While centralizing authority for capital projects, the proposals also aim to do so in a manner that addresses other needs, namely the need to be sensitive to real differences among public agencies--their mandates, financing mechanisms, relationships to the executive and distinctive procedures and priorities--and the need to consider what in the existing order might be reformed and what needs to be replaced. These proposals are discussed below.

Division of Capital Planning and Operations

The Commission submitted a proposal to the Committee of State Administration on March 12, 1980 (see appendix) as part of the Commission's revised legislative package calling for the creation of a new Division of Capital Planning and Operations. This division was to be located within the Executive Office of Administration and Finance parallel with other Divisions, such as those for Fiscal Affairs, Central Services, Purchasing, etc. The Commission-sponsored proposal, originally filed with the legislature on December 5, 1979, had proposed the creation of two agencies: a Division of Capital Operations and a Division of Capital Planning. The latter agency was to carry out the required planning tasks. The former agency which was to manage or oversee authorized projects from the early planning stages, through design and construction, to a successful conclusion. After much comment and extensive deliberations, the Commission refined the December 5 proposal and jointed the two divisions into one.¹

Relationships to the Budget Bureau and the Operating Budget

Questions also arose about the role of the Budget Bureau and formulation of the operating budget in relationship to the capital outlay budget. Although the operating budget was not a direct concern of the Commission in its work, issues which arise out of capital outlay matters have an impact on operating budget matters. Such issues include the annual operating cost of facilities to be built, including maintenance and heating issues, the expense of programs housed within the facilities, and the annual cost of payments for principal and interest on bonds floated to pay for the facilities. It was thus necessary that the relevant agency or agencies take account of the mutual relationships involved.

The budgeting process and the Budget Bureau have been the subject of critical review from diverse quarters. The substance of the anticism was in many ways typical of the kind characterizing agencies concerned with capital facilities,

and indeed of many other agencies: lack of planning, poor data resources, lack of standards, inefficient administration, etc. Neither the mandate nor the resources of the Commission were appropriate to the task of more carefully evaluating those problems. Without such an inquiry it was not possible to offer an informed proposal for a single agency with a structure and procedures for handling both the operating budget and the capital budget issues. Indeed, that assumes that such a single agency would be appropriate in the first place. Many states have judged otherwise. Moreover, this would mean that more dramatic changes would have been required. The turmoil, in the short run at least, would have made the effort to create a single budget agency self-defeating.

The affirmative arguments for separating capital outlay budgeting from preparation of the operating budget were even stronger. Two Governor's Task Forces had noted the virtual absence of capital outlay capabilities and resources in the Budget Bureau. Most certainly there would be little or no change required to be made in the Budget Bureau if another agency handled capital outlay. From the perspective of the Budget Bureau itself, they recognized that they had their hands full in accomplishing their own tasks. The work in capital outlay was distinctive enough, and the proposed reform involved such fundamental issues that the change was best effected by a new agency.

The Commission concluded that the best solution would be to keep the executive's capital planning and budgeting process within the proposed single new Division. The necessary coordination with the Budget Bureau and the mutual relationship between operating and capital budget issues could be achieved by instituting proper procedures and standards. (See the discussion below.)

Internal Structure of the Division

Before proceeding to describe how the Division will avoid many of the problems discussed earlier and provide long-range, coordinated, and comprehensive planning it is necessary to understand the internal structure of that Division, the concept which informs it, and the relationships of its various elements. In particular, the Commission's proposal includes three offices within the Division: the Office of Programming, the Office of Project Management, and the Office of Facilities Management. The establishment of those offices, in effect, abolishes the Bureau of Building Construction (currently within the Division of Central Services). Additionally, the Bureau of State Buildings (also currently within the Division of Central Services) is renamed the Bureau of State Office Buildings and located within the new Office of Facilities Management.

This arrangement aims to bring within the new Division the capabilities to: perform, review, and manage specific project planning prior to the design stage (the Office of Programming); manage major new construction or renovation projects

from the design stage through construction to completion (the Office of Project Management); manage repair, energy conservation and other smaller specialized projects through the corresponding stages; oversee the maintenance of existing facilities (Office of Facilities Management); and work closely with the agency specifically responsible for maintaining the state office buildings (Bureau of State Office Buildings).

The legislation also permits the creation by the Deputy Commissioner of a unit concerned with real property management, in order to provide the Executive with a clear mandate and the necessary resources to manage the real property owned, acquired or disposed of by the Commonwealth.¹¹

Most of the information gathering functions of the Division were given to the staff of the Deputy Commissioner. They could coordinate and process those data whether related to real property or to repair and maintenance issues. That being the case, the close connection between planning decisions for construction and the alternatives for purchase, leasing, rehabilitation, etc. loomed larger. The resources and expertise were best located in the same place as the source of recommendations. Hence, the real property management staff is required by the legislation to be part of the Deputy Commissioner's staff. To afford him maximum flexibility, however, he has the discretion to establish a separate unit pertaining to those matters or to organize his entire staff in some other, more effective manner.

Responsibilities of the Deputy Commissioner

This notion of a distinctive staff for the Deputy Commissioner, apart from the above-mentioned Offices and Bureau, arises not out of an explicit statement in the enacted Commission legislation, but rather follows from the specification of the Deputy Commissioner's responsibilities in those new statutes. In this regard, too, the new Division has a distinctive character as compared with others in A&F or other Secretariats. In a number of instances a Deputy Commissioner or comparable official oversees his agency with a relatively small staff focussed primarily on policy-oriented decisions. Personnel matters, day-to-day support activities, and even substantial decisions related to agency functions may be - as matter of statute or administrative policy-left to the units within the agency. This is not the concept embodied in the statutes pertaining to the Division. Rather, the idea is that the Deputy Commissioner, through his relatively large staff, will provide a centrally managed support infrastructure for all the Division's component units. He will thereby exercise considerably more authority in the review and setting of policy for each of those units than is typically the case.

The reasons for such a structure are several-fold. First of all, the very choice of units which are concerned with distinctive aspects or phases of building projects requires that there be a single place where clear authority resides. Distinct but mutually dependent activities have to be coordinated and have a locus for final decisions as to priorities or policies. Secondly, the structure avoids duplication of resources or services which all units may, to some degree, require. Thirdly, it best facilitates the collection, recording, analysis, and distribution of data.

The Division Jurisdiction over Planning

With this general structure and its rationale in mind, the way in which the Division is to provide the desired planning can be examined. Of particular concern are agency planning, Division planning, and the relationship between the two. This necessitates an understanding of the agencies involved and to the extent of their involvement.

For the reasons described below, the Deputy Commissioner (1) is given the responsibility to prepare a unitary, long-range, capital facilities plan and capital budget based on it. It is unitary in the sense that it is intended to reflect the capital facility concerns and priorities of all public agencies, insofar as they relate to capital facility projects in which the Commonwealth has an important interest. Toward this end, the statute defines both a "capital facility" and a "capital facility project". (2) The former corresponds to the physical object in which the Commonwealth is making a long term investment—for example, a building which is to be occupied or other public work. The latter includes the managerial and technical aspects of procuring such a capital facility and the financial means and mechanisms for paying it.

The description of capital facility includes a specific listing of kinds of buildings and other facilities roughly corresponding to the functional mandate of various public agencies. The definition of capital facility project focuses primarily on financing by the issue of bonds, notes, or other evidences of indebtedness by the Commonwealth or any public agency of the Commonwealth, but also permits consideration of capital facilities which are paid for through an annual budget or other appropriation.* However, the terms "capital facility" and "capital facility" project are terms of art. The particular meaning lent to them varies according to the type of physical facilities desired, the lifetime of the physical investment made, and the manner and duration of means to finance that investment. For that reason, the articulation of a more precise (or elaborate) definition of each is left to standards established by the Deputy Commissioner within the framework of the definitions provided.

These definitions were drafted with the intention of providing the broadest opportunity for the Deputy Commissioner, the Governor, and the Legislature to be aware of the plans of the public agencies which the Commonwealth controls, regulates, or funds, or for which it has specified policies, purposes, or standards for the pursuit of projects for capital facilities. The word "aware of" is extremely important here because a certain confusion seems to have arisen about the precise role to be played by the Division with regard to the projects of public agencies with widely varying relationships to the state.

Distinction Between Jurisdictions as to Planning and Jurisdiction as to Operations

The role of the Division vis a vis other public agencies is essentially specified by the statutory provisions concerning the "jurisdiction" of the Division. There are four levels of jurisdiction, described in section 40A of Chapter 7. The lowest common denominator for jurisdiction is a record keeping requirement imposed on all public agencies. The new statute provides for establishment by the Division of "requirements for record keeping and reporting by the administering agency as to control and supervision of capital facility projects"(3) so that the Division "may assess the nature, scope and programs of all planned or current capital facility projects and fulfill its responsibilities as defined by this chapter and other relevant statutes".(4) In other words, in order for the Division to prepare unitary and comprehensive planning recommendations it must have information about planned or current capital facility projects of all public agencies.

The distinctions afforded by paragraphs (1), (2), and (3) of the same section correspond to the responsibility of the Division in its operations aspect. Operations involves projects that are not only planned, but are to be carried out. Those distinctions will be discussed later. Suffice it to say that at this point the Division has an operations role only in regard to the classes of projects defined by paragraphs (1), (2), and (3) of section 40A of Chapter 7 - state agencies, building authorities and DCA housing projects, respectively. Direct Division involvement with the DCA projects is minimal.

The Content of Long Range Plans

Within this framework, the specific responsibilities of public agencies in the planning process are articulated beginning with the newly enacted c. 29, s. 7A. In particular, every public agency other than a city or town (see below) is required to prepare a "long-range capital facilities development plan - with

*There is nothing which bars the Commonwealth from paying for capital items wholly out of the operating budget rather than by borrowing. Indeed, a number of states do precisely that. But if that has been done to any appreciable degree by the Commonwealth other than reimbursing cities and towns for school building construction, it has not been evident and seems unlikely.

estimates for a period of five years or more - and revise it annually or at such other appropriate period as the Deputy Commissioner determines." The planning period of five years is within the typical range required by other, which tend to mandate three to six year periods. The effective planning period may vary since the revisions need not necessarily be done every year.

Variations will depend on the content of the plan and revisions. The minimum content of each is defined by the newly enacted c. 29, s. 7B. Each plan, in effect, will contain a description of the agency mandate by law and rule, as well as an interpretation of each by the agency itself and a consideration of potential factors for change. The plans will itemize the capital facilities used by the agencies according to their physical character, detailing the kind and extent of current and future use. There will follow an articulation of the capital facility needs based on the aforementioned factors. Other sections will translate those needs into specifications of the scope, cost, schedule, and financial, programmatic and other impact of the projects desired to satisfy those needs. Any revision of a plan will, of course, reflect changes in those estimates. How far the plans will go beyond the minimum content will be determined by the Deputy Commissioner. Presumably that will vary with the agency and the Deputy Commissioner's ability to produce and evaluate the information sought, its value, and the precise relationship the state government has with the agency in question. Clearly, the demands on a line state agency will be very different from an agency which requires only a nominal approval of its authority to issue a certain aggregate in bonds.

The Department of Community Affairs (DCA), cities and towns have a distinctive role. Cities and towns are not required to submit long range plans, or budgets. Rather, such submission is the responsibility of the "state agency the authorization of which is otherwise required for capital facility projects of one or more cities and towns." (5)

The Commission concluded, after considerable discussion, that requiring localities to submit plans, even if concerned only with capital facilities in which the state otherwise plays a role, was unduly burdensome and potentially duplicative. It seemed appropriate to place the responsibility for securing and aggregating the required information (which may already have been obtained by the state agency in its dealings with the locality) on the state agency whose approval is otherwise required. The same section provides that any plan, revision, or budget requested of c. 121B operating agencies be "prepared and submitted by the [D]epartment of [C]ommunity [A]ffairs". The rationale here is similar to that for the previous provision. Also, the DCA has a distinctive role in allocating monies to various operating agencies for housing projects and in overseeing the planning and execution of such projects.

In addition to submitting long range plans, the relevant public agency is also responsible for preparing an annual capital facility budget.(6) This is intended to embody the specific capital facility budget requests that the agency is seeking for the next fiscal year.

Specific and Lump-sum Requests

Chapter 29 Section 7C distinguishes between two kinds of requests: those "for a class or classes of similar or related capital facility projects" and those for "individual projects." The distinction accommodates the actual historical and likely future usage by agencies such as DCA, Division of Environmental Management (DEM), or Department of Public Works (DPW) of blanket authorizations for classes of projects. The allocation of the sums involved might be made by the relevant agency in light of certain specified guidelines and procedures. The statute reflects no judgment about the appropriateness of the procedure. It does however, require that if such requests are made, the class be clearly defined, the reasons for making the request be stated, the priority and allocation procedure be specified, and a suggested initial allocation be presented. This information, in conjunction with the reporting requirements on the progress of projects(7) is believed to provide an effective means for critical review and control of such blanket authorizations.

Budget Requests

For individual projects the minimum content of capital facility budget requests is determined by c. 29 s. 7C. Some of that content has in recent years been required in the capital outlay manual prepared by the Budget Bureau. Beyond the now statutory mandate to provide such information, data on certain other significant project characteristics must be included. Such data include information on the proposed project schedule and cost estimates based on that schedule, along with a characterization of the accuracy of the estimate. The appropriation history of the project and the progress made in light of that history must be documented. Furthermore, there must be estimates of the impact on the operating budget once the facility is put into use and of the useful life of the project. Much of this information is intended to provide a stricter definition of the project and, where relevant, a perspective on its development so as to assure cost review and control, particularly by the Legislature.

Resources for Planning

It should be obvious from this discussion that public agencies, particularly state agencies, will have greater demands placed on them to do planning and to report the resulting plans. The legislation addresses some of the means which may be available to public agencies to meet these demands. First, to avoid misdirection and wasted resources the Deputy Commissioner, after consultation

with the Governor and Commissioner of Administration, is to prepare and send to public agencies:

a capital facility planning policy statement to inform them in the formulation of their long range capital facilities development plans and capital facility budget requests.¹² Second, at his discretion, the Deputy Commissioner may "provide technical assistance to those public agencies lacking sufficient resources to prepare...plans"(8) and "capital facility budget requests.(9)* Third, individual agencies or Secretariats may include in their capital facility budget requests sums to pay for comprehensive (agency or Secretariat wide) or individual project planning. Fourth, there is a "capital facility planning fund" made available to state agencies other than counties by c. 29 s. 2G. The precise procedure for use of that and other funds is discussed below.

This fourth provision gives priority to those projects which form part of a legislatively or administratively approved long-range or master plan and which must make rapid progress to prevent excessive increases in project costs or to avoid serious delay in use of the projects. Among other possibilities, the sums may be used to prepare environmental impact statements and to acquire options on

land or buildings for the project. In addition to the financial and other checks on the use of this and similar funds (see discussion of c. 29 s. 2F below), approval of the relevant Secretariat head is a necessary but not sufficient condition for allocation. This was deemed appropriate because the judgment of the Secretariats in overall planning priorities is mandated by the statutes creating the Secretariats. Thus, the Secretary should have control over the advance of projects - at least by this route.

An additional check on administrative allocation of such monies is that no request may be satisfied if it was rejected during the most recent capital outlay process or is currently being considered. One bite at the apple should be sufficient. Finally, if the project is indeed funded beyond the planning stages, then a sum equal to the allocation is to be deducted from the project appropriation and returned to the fund. This will assure that the project is charged for the true total cost and a means is available for replenishing the planning fund. As a whole this should provide a means for supporting agency planning while expediting projects of particular urgency by a speedy but well regulated mechanism for financing planning outside the yearly capital outlay process.

* See detailed discussion in "Programming" section, below.

Reviews of Plans and Requests

Beyond the requirements for long range plans and capital facility budget requests, standards for the content of those plans and requests, and the resources for preparing them, the enacted statutes make certain specific provisions for a series of reviews of the requests submitted to the Deputy Commissioner of Capital Planning Operations.

The first provision involves "potential users and staff of the facilities controlled or to be controlled by the agency". They must be given "timely public notice" of the proposed plans and requests and a "reasonable opportunity...to comment thereon." ¹ Because there is no framework specified for the public notice or the public comment, there is maximum flexibility. The provision may thus be abused. However, the Deputy Commissioner may "provide guidelines to agencies for soliciting and reporting on such views." ² This, in conjunction with public monitoring will, hopefully, prevent abuse.

The second set of provisions concern review by other state agencies and by the legislature. This is achieved by submission of the proposed plans and requests to "the secretaries of all executive offices, the director of the budget bureau, the state treasurer,...the Commissioner of the department of revenue, and the house and senate ways and means committees" ³. (In the context of the then current law, the provision was intended to include the Secretary of Educational Affairs for institutions of higher education; under the recent reorganization, the appropriate body will be the Board of Regents.)

The Secretaries are to report "on the consistency of any public agency's plans or requests with the programs and policies" ⁴ of the Secretariat, assuming that the public agency is located in the Secretariat. This kind of review is consistent with the responsibilities of the Secretariats and could include specific recommendations for approval or disapproval of any part of a plan or proposed project. In certain instances a particular project may have an impact on the ability of a Secretariat - other than the one in which the public agency is located - to carry out its mandate. Two such examples are: environmental impact in the case of Environmental Affairs and energy conservation in the case of Energy Resources. Hence, the statutes provide the opportunity for the Deputy Commissioner to request of any Secretariat "a report on the impact on the plans and requests" ⁵ of such extra-Secretariat agencies. There are also a provisions for public hearings by the Secretariats and submission of all plans, requests, and reports to the House and Senate Ways and Means Committees and the Committee on Post Audit and Oversight.

In order to assure coordination with the Budget Bureau and sensitivity to operating budget issues, the Bureau is required to report "on the impact of

proposed agency plans and requests - based on state and projected overall agency programs - on the agency's operating budget for the next five years [or for such longer period as the deputy commissioner might request.] ⁶ The impact would involve the demand on state revenues when the facility is actually in operation: physical maintenance and facility operating costs, staff and other resources to use the facility.

In the latter context the Commissioner of the Department of Revenue is required to report "on the impact of proposed agency plans and requests on their requirements for and product of revenue for at least the next five years (or for such longer period as the deputy commissioner shall request)." ⁷ The intent is to make the Commissioner of the Department of Revenue aware of how the demands for and creation of revenue will be built into the project, to help the Deputy Commissioner of Capital Planning and Operations better able to estimate the efficiency of the proposed project(s).

As a response to the concern about overall fiscal management of the capital outlay program, the Director of the Budget Bureau and the Commissioner of the Department of Revenue are required to submit their reports to the State Treasurer as well. The State Treasurer "may if requested by the deputy commissioner report in writing...on the impact of all plans and request, separately and as a whole on the financial health of the Commonwealth and make such recommendations as to the form and nature of the financing as s/he deems necessary." ⁸[NOTE: The Commission sought a mandatory report but it was changed to an optional one by the legislature.

Planning by Capital Planning and Operations is oriented toward state programs and services and facilities. The provision of such programs, services and the location of such facilities may have a significant impact on economic development in the Commonwealth in general and cities and towns in particular. For this reason, it was seen as appropriate to assure some minimum and reciprocal awareness of that impact by the state and localities.

Thus, in addition to the "user" and "staff" review afforded by c. 29 s. 7C the statutes as enacted provide that copies of the proposed agency plans and requests be submitted "in a timely manner to each of the regional planning agencies" and that such agencies submit to the Deputy Commissioner "a statement of their comments and recommendations including those of cities and towns in the region which are affected by such plans and requests. ⁹

The converse of this submission is to some degree found in the newly enacted provision that the Deputy Commissioner "be notified in a timely manner by the agency designated as the state clearinghouse (as provided by the federal Intergovernmental Cooperation Act of nineteen hundred and sixty-eight) as to any

capital facility projects reviewed by said agency." 10 To the extent that such projects might impact on "current long range capital facility plans and other programs and policies of the Commonwealth" the Deputy Commissioner is to submit his comments and regulations to that state clearinghouse. 11 Indeed it is a specific responsibility of the Deputy to advise the Governor and the Commissioner of Administration "on the means and methods available to coordinate capital facility project plans and programs of all public agencies and the federal government in order to establish relative priorities and to avoid duplication of conflicts." 12

Toward that end and toward meeting his specific responsibilities in the planning and budgeting process, the Deputy Commissioner is to establish a "central depository" for such planning (pre-design) documents of all public agencies as he may define by rule and regulation which are to be submitted to him.

It is the responsibility of the Deputy Commissioner to study and review the information submitted to him and then to prepare a "capital facility budget" for the governor including "an integrated and comprehensive capital facilities development plan and capital facility budget request" and "such other recommendations as the governor shall determine upon." 13

The task of finally preparing the plan and budget request will be carried out by the Deputy Commissioner's own staff. However, considerable technical evaluation of the specific projects must be carried out before completion of the analysis and judgements. According to the specific mandate of the enacted statutes and the directives of the Deputy Commissioner, it is the responsibility of the Office of Programming, the Office of Project Management, and the Office of Facilities Management to provide the Deputy Commissioner with technical analysis of the feasibility, cost, and schedule of proposed building projects; their operational and maintenance characteristics; the relationship to space allocation and utilization standards; and the character and quality of the associated studies, programs, designs and other supporting documents. 14

Since the mandated responsibilities and staff duties of the Division in the operational sense are oriented to building projects within the purview of state agencies it is not necessarily the intention of the legislation to have the Division or Deputy Commissioner responsible for any extensive technical review of public works projects or certain classes of building projects (such as housing projects). In some instances it seems wiser to rely on the technical expertise of the administering agency intimately involved with such projects. For that reason, the enacted statute provides that the Deputy Commissioner may ask "the head of the public agency which administers or would administer a capital

him/her for that purpose" for technical evaluations of those projects. The latter choice provides the opportunity for the Deputy Commissioner to obtain an independent evaluation if there is no specific staff expertise within the Division.

Although it is intended that there be flexibility in how the Deputy Commissioner prepares the final documents it is intended that they closely follow the form and content of plans and budget requests submitted to him in accordance with the statutory prescriptions described earlier. Thus, the information is to be "classified and designated to present at least the same kind of quality of information as are required of plans and requests" submitted by the agencies.¹⁵ To assure coherence in the formulation of plans and requests and to assure consistency with the guidelines given to the agencies the Deputy Commissioner is also to submit to the governor "an evaluation of the proposed plan and budget request in terms of (that)...capital facilities planning policy statement." ¹⁶

Mandated Studied and Programs

In addition to specifying requirements for supporting data and analyses and the manner of presenting both plans and capital facility budget requests the statutes mandate that the Deputy Commissioner, both in his recommendations to the Governor in his budget, include certain specific recommendations.

First, "for each building project...for which the using agency is a state agency"¹⁷ there is required "a recommendation as to the need for and where appropriate, a request for, a study and program as a prerequisite to contracting for performance of, or allotment or expenditure of funds for any design or construction related activities." ¹⁸ If no such recommendation is made "the governor and deputy commissioner shall include the reasons therefor." ¹⁹

This provision arises out of the total inadequacy of pre-design planning building projects of state agencies. The Commission believes that it is essential that a study and program should be done for each building project, and should be completed prior to the design and construction stages.

The latter provision should be read in conjunction with that contained in c. 29 s. 7K which states that:

[e]very appropriation or authorization for the design or construction of a building project for which a state agency is the using agency shall be deemed to require the satisfactory completion of a study or program before any services for the design or construction of such project may be constructed for, performed by contract or otherwise, or funds allotted, encumbered or expended therefor, unless such appropriation or authorization specifically states that no such study or program need or shall be done.

In other words, the presumption extends to the legislative deliberation and decision process itself: a study must be done, unless the legislation specifically mandates that no study or program be done.

These requirements still provide flexibility for both the executive and the legislature; they do not require a study or program if that is seen as inappropriate, but only after action by the executive and legislature is taken to avoid doing so and only after (in the case of the executive) justification is given. This is especially important in those situation where entirely new or substantially different projects are initiated in the legislature itself. These, it may be recalled, will typically have undergone little or no scrutiny by the executive or for that matter by the legislature. Approval of such projects is, of course, the constitutional prerogative of the legislature (assuming concurrence by the executive) but then special effort will have to be made by proponents of such projects to justify not studying and defining the scope and costs of such projects. The intent of the provisions is to provide a basis for a subsequent decision to fund the design and/or construction stages and to provide additional time for the legislature to reflect (perhaps again) on the viability of the proposal.

The two above-mentioned requirements are in turn linked to a third which provides an additional check on the progress of projects which may be insufficiently defined to justify progress to a later stage. In particular,

[N]o provider of design services for any building for which a state agency is the using agency shall be selected by the designer selection board or by the administering agency...and no design services shall be performed...for any building project for which the satisfactory completion of a study or program is required prior to the design or construction of that project, unless and until 20

a series of reviews have been made and certifications been given. Not only must the study and/or program have been "satisfactorily completed" but also the using agency must certify that at that time they conform to current needs and long range plans; one or more directors of the Offices within the Division after review requested by the Deputy Commissioner certify that the study and/or program reflect the stated needs, are accurate estimates, can be performed within the appropriation or authorization, and should advance to the next stage; and the Deputy Commissioner certifies that they are in conformity with the appropriation and authorization and legislative intent in regard to the agency's plans. Should the certification not be forthcoming the project cannot continue and that fact and reasons for it are to be reported to the House and Senate Ways and Means Committees. Further legislative action would then be required before the ill-suited project can advance any further.

Phasing of Procurement

Another recommendation required of the Deputy Commissioner and the Governor in their budget proposals involves the "phasing of procurement", that is whether the approval is to be sought for the design stage only or for both the design and construction stages. If the recommendation is for other than combined phasing the Deputy Commissioner and Governor are to "state in detail the reasons therefor." If the necessary pre-design planning has been done, including the setting of overall priorities as well as study and programming, then it is the Commission's belief that the purpose, nature, scope and cost of the projects will have been so thoroughly reviewed that the project can advance speedily and directly through the design to the construction stage. Should there be some good reason not to proceed in that manner then those reasons should be given.

Still another requirement concerns the mode of procurement itself. The bulk of the procedures recommended by the Commission and embodied in the statute are rooted in the concept of the so-called "sequential method" of project development, which involves clearly defined pre-design, design, and construction stages. Not only are the activities readily distinguishable but so are the actors at each stage ("programmer", "designer", "contractor", etc.), and the role of the Commonwealth in overseeing them. But there are other modes of procurement such as construction management, design/build, turnkey, and so on, in which the stages are not so distinct and the talents, roles, and responsibilities of the actors are different.

The use of modes of procurement other than the sequential one can offer considerable savings in terms of time, money, and perhaps improvements in quality. However, they may also entail considerable risk if the method should fail. The degree of success is contingent upon the expertise and acumen of the "owner," in this case the Commonwealth, and in certain instances involves considerably more discretion on the part of those exercising authority on behalf of it. Moreover, the notions of equity, free competition and fairness must be transplanted into the new frameworks because the conventional procedures for selection of private contractors are typically not amenable to these other approaches.

The experience of the Commonwealth with these other methods has been minimal, particularly in regard to projects for line state agencies. Such other modes have been used to a limited degree by other agencies, such as in DCA housing projects. However, the sorrow-filled experience with "construction management" as carried out by MBM has tended to discredit any attempt by the Commonwealth to try alternative procurement methods. Moreover, when other states and the federal government have experimented in this area, they have not enjoyed unalloyed

success. Because the sequential process is so rooted in the statutes and practice of the Commonwealth and many parties - both public and private - have vested interest in preserving the status quo, there has hardly been a rush to try anything dramatically new.

Under other circumstances a Commission such as this one may have recommended something dramatically new. But the evidence is overwhelming that the ability of the Commonwealth to administer even the conventional sequential process is sorely lacking. It is, therefore, first necessary for the Commonwealth to strengthen its ability in that area before moving into one which typically requires considerably more expertise, resources, and judgment. Nonetheless the Commission feels that although no new procurement process should be written into law at this stage, it is a matter which those responsible for building projects should reflect upon and, when appropriate, should make recommendations for new approaches on a case by case basis.

Thus, the legislation requires that the Deputy Commissioner and the Governor, in the budget recommendations

also include a recommendation as to the mode of procurement of such facility, including but not limited to, sequential, construction management, turnkey, design/build procurement....which will most efficiently, economically and best serve the interest of the commonwealth. 21

If an alternate mode is recommended they shall

also recommend the method by which design and/or construction services shall be procured for such project, provided that such method shall be compatible with the policies and procedures for the selection of designers in sections 30B through 30P and with the policies and procedures for the selection of contractors in section 44A through 44H of chapter one hundred and forty-nine, to the extent feasible. 22

The supporting information is to be provided by the Director of the Office of Project Management, namely,

(t)he director shall...recommend to the deputy commissioner the method for procuring design and construction services when an alternative construction method is recommended; such recommendation shall be in writing and contain the reasons for not complying with the standard selection and bidding laws provided that the legislature shall approve the method for such project and provided that such procurement method shall comply with the policies and procedures of sections thirty B through thirty P, inclusive, of chapter seven and sections forty-four A through L, inclusive, of chapter one hundred and forty-nine, to the extent feasible. 23

In addition, the Director is to

develop guidelines regarding the types of projects that would most benefit from use of alternative construction methods and shall periodically evaluate their effectiveness. 24

Other Provisions of the Legislation

The Deputy Commissioner and Governor are also required to include in their budget recommendations specific provisions for certain other accounts, the purposes of which and the manner of administering them being determined by statute. In particular, they are to include provisions for a "design and construction contingency reserve account" 25 and an "emergency repair reserve account" 26.

The aim of the former is to

provide monies for the design and construction of capital facility projects by state agencies which, because of unforeseeable circumstances, not within the contemplation of the using or the administering agency, and for justifiable reasons, would cause the project cost to exceed the sums then appropriated or authorized therefore. 27

Priority is to be given

to projects for which the delay in seeking monies through the normal capital budget process provided for by this chapter would cause a serious loss in use of the capital facility if it were unavailable when needed or cause a percentage increase in total project cost substantially larger than that for other projects at a comparable stage of progress. 28

To avoid circumventing of normal procedures and the normal capital outlay process, no request is permitted if

a similar request is currently being considered according to the capital budget process for the current fiscal year..., or which was so considered during the capital budget process for the previous fiscal year and failed to receive an appropriation or authorization. 29

These monies are not intended to finance significant changes in project scope - which should be the subject of legislative review - but their aim is to deal with "unforeseen circumstances" in the execution of the project. Hence, there can be allocation of the Deputy Commissioner

finds (a) that the proposal for use of such monies will result in a substantial deviation from any study or program for the project most recently approved by him/her or from any design for the project most recently approved by the administering agency or (b) that the proposal for use of such monies will result in a cumulative increase in the number of gross square feet to be constructed in the project in excess of ten per cent of the number most recently specified in an appropriation or authorization for the project. 30

In this instance (as compared to the capital planning fund discussed above) no approval of the request by the Secretariat is required. This is because the sums are not to be used for changing the programmatic concept of the facility in any substantial way. The concern of the Secretariat is that there be a project and a programmatic concept in the first place, not the contingencies of executing that project.

The aim of the "emergency repair and reserve account" is to

provide monies for the performance of repair projects of such a nature that funding through the capital budget process...would be burdensome. 31

Top priority is to be given to

funding requests for projects designed to remedy clear and present dangers to the health and safety of the users of the facility in questions;

second priority to

funding requests for projects that would prevent imminent destruction or damage of property or equipment beyond reasonable repair;

and third priority to

funding requests for projects, that would restore use of a facility or part of a facility to its user, where the loss of use has seriously disrupted the agency' functions. 32

Here, too, provision is made to deter the circumvention of the normal capital outlay process. For the same reasons as noted above, requests for funds do not require approval by the Secretariat. Because of its special responsibilities in the area of repair and maintenance, the Office of Facility Management is permitted to make requests for such funds, in addition to state agencies (other than counties).

The Commission proposed the establishment of the capital planning fund and the specific requirement to make recommendations for design and construction contingency reserve and emergency repair reserve accounts because of the importance of those areas. (The distinction between an on-going "fund" and a yearly "account" arises out of the difference between the ongoing character of planning and the "one-shot" nature of project contingencies or repair projects.) The definition of purposes, the specification of priorities and restrictions concerning when and by whom requests may be made or approved are intended to remedy the poor definition and inadequate fiscal control characterizing the lump-sum accounts discussed earlier.

The funds and accounts specified in the statute do not exhaust the possibilities for "lump-sum" funding of specialized activities. Requests for such funding may, of course, be sought during the capital budget process. In particular, the legislation as enacted provides that

[t]he governor and the deputy commissioner...in their....plans and capital budget requests and the secretaries (may include among their plans and requests ones) for one or more contingency, or other lump-sum or reserve accounts, including but not limited to planning, design and construction contingency, preventative maintenance, emergency repair, energy conservation, life safety, and architectural barrier funds or accounts. 33

In doing so, they are able to include recommendations about the "purposes" of such funds or accounts and "the priorities and procedures for allocating the monies kept therein." 34

For the above mentioned funds and accounts such purposes, priorities and procedures are defined. In the case of other funds or accounts, it is the responsibility of the Deputy Commissioner to establish such

accounts "in conformity with the terms of the appropriation authorizing then and legislative intent in terms of long-range capital facilities development plans."

35

In the case of the statutorily mandated design and construction contingency account, the Deputy Commissioner, in establishing such priorities and procedures, must

establish specific limits for the amount of money which may be allocated from the account for any particular project excluding price inflation contingencies, and the amount which may be allocated for the construction of any particular project for price inflation contingencies. 36

Greater specificity is necessary for cost allocations in this area because of the large sums involved. A distinction should be made between the contingencies caused by price inflation and others, which typically arise out of unforeseeable physical events. The 10% limit on allocations to a particular project does not mean that another cushion (as currently) cannot be built into the basic appropriation sought by the agency. It should, however, receive close scrutiny when the appropriation is being considered. It should be closely linked with the expected contingencies of such projects, the accuracy of the cost estimates for the project program, and any special project characteristics or uncertainties.

The statute also defines the procedure for making allocations in light of those specified purposes and priorities. This is intended to place authority where expert judgment and institutional responsibility reside. Thus, an allocation may be made only if the using agency certifies that the project "corresponds to [its]....current needs (including long range plan)"; after one or more directors of the division offices certify the accuracy of "project requirements, cost and schedule" and the ability to complete the project "within the limits of the funds requested"; and the Deputy Commissioner certifies that the request is "in conformity with the terms of the appropriation or authorization" and his "priorities and procedures." Finally, he must approve the allocation.

All requests are reported to the Commissioner of Administration and the House and Senate Ways and Means Committees. The Deputy Commissioner must state his reasons for disapproval. This should provide a further check on abuse of discretion, while leaving responsibility for the final decision solely in the hands of the Deputy Commissioner.

Reports on Projects

To provide the chance to evaluate the efficacy and administration of such funds and accounts, there is to be a yearly report (due by February 15) by the Deputy Commissioner, describing the projects using such monies and the status of

the funds or accounts. This reporting requirement is one of several included within the statutes. They are aimed at addressing the absence or poor quality of record keeping which hinders efficient administration and the coordination of programs, and which may obscure, intentionally or otherwise, the reasons for decisions and the identification of those responsible for the decisions.

The Deputy Commissioner is required to prepare quarterly "comprehensive report(s) on the progress of all capital facility project subject to the jurisdiction of the division" ³⁷ except for those of cities and towns. A similar report must also be prepared on an annual basis but contains more information, including data on projects of cities and towns. (The annual report may be treated as one of the quarterly reports.) The information is to be supplied pursuant to the reporting provisions applicable to all capital facility projects. These are subject to the jurisdiction of the Division as defined by c. 7 s. 39C and described above.

Such information will serve the Director as a means to evaluate and compare the efficacy of various capital facility programs, particularly building programs. It will assist in their coordination and aid in the preparation of recommendations concerning future programs. It will also aid the relevant legislative committees and interested legislators in grasping the nature, scope, progress and overall impact of the Commonwealth's capital programs. To facilitate this, the Deputy Commissioner is to include in his annual report

a statement of the problems which have arisen in the capital facility procurement programs and procedures of public agencies and his/her specific recommendations for administrative and legislative action which in his/her view are necessary to remedy such problems. ³⁸

For similar reasons, the Deputy Commissioner is also required to prepare annually a report including

an analysis of the utilization, cost and method of acquisition of real property acquired for the use of state agencies; the sale or rental of such real property and revenue realised therefrom...³⁹.

This is to provide an analysis of the problems which have arisen and recommendations to solve them.

Advisory Council

To further assist the Deputy Commissioner there is also mandated an "advisory council on capital planning and operations," which is to meet no less often than once every three months. From this the Deputy is to

seek information, advice and counsel as to the recommendation, establishment, and evaluation of priorities and schedules for (c. 7 s. 40M) ... the progress of capital facilities. Those "executive officers of public agencies directly responsible for administering capital facility projects are to attend such meetings as the Deputy Commissioner may request ⁴⁰.

REAL PROPERTY MANAGEMENT

Efficient and effective capital planning requires a working system of real property management. The Commission found the present system to be defective in a number of important respects. There is a lack of information about the real property owned and occupied by the state and there are no systematic procedures for the redistribution, acquisition or disposition of the state's real property.

In the sections that follow, we briefly describe the "formal system" of real property management that was employed during the period studied by the Commission. We then describe the consequences of this structure for the management of real property by the Commonwealth. Finally, we describe the Commission's recommendations--both those enacted into law and those which have not been implemented. Each part is organized according to the real property management functions of information management, allocation, acquisition and disposition.

THE FORMAL SYSTEM OF REAL PROPERTY MANAGEMENT

The formal system of real property management by the Commonwealth was based on a disorganized statutory and administrative framework. The brief outline of relevant laws, regulations and procedures involved, presented below, illustrates that there was no real "system" of real property management.

Information Management

Both the Comptroller and State Treasurer were required by law to keep records pertaining to real property owned by the Commonwealth. G.L. c.7 s.18 provided that the Comptroller keep a "distinct account ... of public property." G.L. c.29 s.41 required that "all deeds and instruments conveying real estate to the commonwealth shall, when recorded, be deposited with and safely kept by" the State Treasurer.

In 1976 a position of "Director of Space and Property Allocation" (SPA) was created administratively within the Executive Office for Administration and Finance (A&F). According to the transition papers of the Dukakis administration, one of the Director's responsibilities was to execute a computer program to inventory use of state property by state agencies and private, non-profit entities.

Allocation

State agencies were assigned control over real property by the General Court. This assignment was accomplished through a capital outlay authorization to construct a facility or the passage of a bill transferring jurisdiction over property from one state agency to another. Land transfer bills were (and continue to be) reviewed by the legislative Committees on State Administration, and Ways and Means. Alternatively, some agencies obtained control of property through statutory authority to acquire real property by gift or other means.

Once an agency established jurisdiction over real property, it could enter into agreements with other state agencies or private, non-profit agencies for their use of the property. Under Section 17 of Chapter 329 of the Acts of 1980, any such use had to be, "approved by the general court after recommendation by the commissioner of administration." In fact, these agreements were reviewed on behalf of the Commissioner of A&F by the Director of SPA for the length of the Director's tenure (1977-80), and the Bureau of State Buildings (BSB) in his absence. In both cases, they also received the approval or disapproval of the chairs of the Ways and Means Committees.

The allocation of space within state office buildings used by many agencies was the responsibility of the BSB, through the Superintendent of State Buildings. Under G.L. c.8 s.10A, the Superintendent was authorized to,

...under the supervision of the governor and council and with the approval of the commissioner of administration, assign the rooms in the state house and rooms elsewhere used by the commonwealth...

The same section, however, removed from the Superintendent's authority to assign rooms to, "either branch of the general court, except with the written consent of the presiding officer of the branch using the rooms."

The BSB was also assigned responsibility, administratively on behalf of A&F, for the allocation of space within so-called "surplus properties." (This was also one of the duties of the Director of SPA during his tenure.) These properties included former state hospitals, and centers occupied by the Department of Youth Service which were vacated as a result of deinstitutionalization policies.* A&F Bulletin 77-10, dated October 28, 1977, detailed a process through which properties not needed by a state agency were turned over to A&F for use by other state agencies. The procedures to be employed included the agency's notification of the appropriate secretariat,

*Gardner State Hospital, Grafton State Hospital, Lancaster Industrial School for Girls, Lyman School for Boys, John Augustus Hall, South Huntington Avenue and Topsfield properties. The BSB also assigned space in the Springfield Office Building and Madonna Hall, Pittsfield.

preparation of a detailed description of the property in question, and reassignment of the property to another state agency where appropriate.

Acquisition

Many individual state agencies had been given statutory authority to acquire property. In most cases such acquisition was dependent on the appropriation of funds through the capital outlay process. Most commonly, funds were requested for the acquisition of a building site, which may or may not have been selected by the time the request was made.

In some cases, capital outlay authorization language included requirements that a certain number of appraisals or the approval of the Ways and Means Committees be obtained before an acquisition was made. Otherwise, most acquisitions conformed to the following scheme: the using agency selected the site and hired one or two appraisers from a list prepared by the Department of Public Works; the using agency negotiated for purchase of the land; the purchase was approved by A&F and the Governor's Council and was made in the name of the Commonwealth "through and by" the using agency.

The acquisition of real property through rental followed a different procedure. Under G.L. c.8 s.10A, the head of an agency was authorized to lease space for a term not exceeding five years, with the approval of the Superintendent of State Buildings, Commissioner of A&F, and the Governor. An outside section of the annual appropriations act (most recently, Section 17 of Chapter 393 of the Acts of 1979) further required that:

...no lease ... nor any agreement providing for a tenancy at will or other space rental shall be signed by the executive or administrative head of a state department, courts, commission or board or approved by the state superintendent of buildings and by the governor and council and by the commissioner of administration unless it is in accordance with schedules filed by the budget director with the house and senate committees on ways and means prior to the passage of this act...

Furthermore, A&F Bulletin 79-2, dated March 28, 1979, required that agencies justify their need for rental space by first performing a search for vacant state-owned property.

The procedures followed for space rental were somewhat different from those suggested by statute. As a first step, an agency submitted a request letter, perhaps accompanied by rental forms, to the BSB. These were sent to the Budget Bureau for verification of the availability of funds in an agency's operating budget space rental account. Request forms were reviewed by analysts in the House Ways and Means Committee who recommended approval or disapproval of the rental to the Chair. When a number of such requests had been approved, they were sent to the Senate Ways and Means Committee for similar treatment. They would

then be reviewed by an analyst in the BSB for recommendation to the Commissioner of A&F and the Governor.

With the 1980 appropriations act, the Ways and Means Committees removed themselves from the process of reviewing individual rental agreements. Section 16 of Chapter 329 of the Acts of 1980 required instead that the Commissioner of A&F report to the Committees on such agreements on a quarterly basis.

Disposition

Again, a number of state agencies had been granted the authority to dispose of real property under their jurisdiction, through sale or rental.

On the whole, however, agencies were unable to sell or to otherwise transfer title to property without the approval of the General Court. The requirements of Article 97 of the Massachusetts Constitution were (and are) such that two-thirds of the members of the General Court must vote for a change in use of real property acquired as a natural resource. The judicially-derived "Doctrine of Prior Public Use" was generally considered to require a majority vote of the General Court for any other transfer of state property. As in the case of a land transfer between state agencies, these transfers to a new owner required the passage of a bill which had been reported out of the Committees on State Administration, and Ways and Means.

A&F Bulletin 77-10 established a "Surplus Property Reuse Committee," no longer in existence, to advise the Commissioner of A&F in making recommendations to the Governor and the General Court about disposing of state-owned property to an entity other than a state agency. The Committee was composed of the Director of SPA, the Director of State Planning, the Commissioner of the Department of Commerce and Development, a city or town official and a regional planning representative. The Bulletin stated that, in the case of such a recommendation, two appraisals had to be prepared, along with a reuse proposal outlining the economic and environmental impact of the transfer on "local, regional, and state policies and programs."

PROBLEMS OF REAL PROPERTY MANAGEMENT

Introduction

Implementation of plans for an individual construction or renovation project requires that an appropriate site be selected and acquired. The site so chosen must be well-placed for the intended users and must be suitable for building. The complexity of site selection is rooted in the regional, community and private interests which are affected, as well as the environmental and economic concerns

of a number of state agencies. When the selection process breaks down, it can mean the choice of a property which is inappropriate for social or technical reasons.* Widespread perception of such selection problems is evidenced by the fact that "inadequate analysis precedent to site selection" caused the Secretary of Administration and Finance to establish a board, in 1971, with responsibility to evaluate sites as part of the capital outlay process.¹

Difficulties in the selection or acquisition processes can also affect the design or construction phases of a project by causing expensive delays. In fact, a consultant to the Bureau of Building Construction (BBC) wrote that, "no single factor, with the possible exception of inadequate facility definition, causes greater delay than failure to acquire a site when it is needed."² Project delays which occurred in connection with the Lowell Technological Institute, South Shore Community College and Norfolk Superior Courthouse further underline the importance of proper site selection and acquisition .

Commission findings regarding planning, design and construction revealed inadequacies in the Commonwealth's management of its valuable real property - assessed at \$1.4 billion.³ Management tasks include "allocation" - the distribution of the Commonwealth's land and building space among its agencies; "acquisition" - the procurement of land and buildings through purchase, rental, taking by eminent domain or otherwise; and, by logical extension, "disposition" - the rental, sale or other type of transfer of state-owned property. The Commission took as its responsibility, therefore, the investigation of procedures employed in the performance of these functions, in order to determine how resulting problems might be eliminated.

The Lack of a Real Property Management "System"

In pursuing its investigation, the Commission found a significant lack of information concerning real property management. Records are scattered among agencies. No useful figures have been prepared on the number of land parcels purchased, sold, rented or owned, or monies spent or accrued as a result of such transactions.** In fact there are no figures available on the amount of usable, unoccupied space available to agencies in need. As a result, any analysis of real property management must be based on the personal observations of

*For example, as cited in the planning section of this report, community opposition to the Department of Youth Services program in Topsfield left facilities there unusable.

**The Commission was able to determine, through the use of records in the Comptroller's office, that \$173,295,435 was spent for land acquired on behalf of state agencies during fiscal years 1969-79; and \$108,803,395 for space rentals by state agencies for fiscal years 1970-79.

knowledgeable individuals. In all cases where comments are not attributed, they were made off the record.

In discussions with these individuals, the Commission found that, as with the other aspects of building procurement discussed in this report, real property management suffers from the lack of any true "system." Contact with the many participants in the process, from agency personnel to staff members of the Committees on Ways and Means, the Bureau of State Buildings and the Executive Office of Administration and Finance revealed to the Commission that few individuals understood how real property transactions were carried to completion. With each inquiry the Commission found that it was able to provide participants with as much information about procedures as it received. For example, a capital outlay analyst for the Senate Ways and Means Committee told the Commission that the Bureau of Building Construction was responsible for site selection; the BBC told the Commission that it was not. The Commission also discovered a number of independent efforts being made by state agencies to track down elements of the "system," from space rental to the disposition of state-owned property. Furthermore, the Commission began to receive inquiries from citizens who were interested in a parcel of state property and were unable to locate anyone in state government who could help them.

A discussion of the details of real property management, linking the participants with procedures employed, and both of these with cases of maladministration, will follow below. In creating a broader perspective from which to view the particulars, however, the Commission has identified three major flaws of the "system." These are: 1) a serious fragmentation of responsibility among agencies which prevents the development of an effective decision-making capability; 2) a lack of expertise and resources at every level; and 3) the insinuation of inappropriate political considerations into the execution of real property transactions.

Fragmentation of Responsibility

The Commission was struck, for example, by the absence of any entity which has the statutory power necessary to protect the state's interests in its real property. Instead, responsibility is shared within the executive by the Bureau of State Buildings and its secretariat, the Executive Office for Administration and Finance; responsibility is shared within the legislative branch by the Committees on State Administration, and Ways and Means, as well as the General Court itself; and, finally, numerous state agencies are granted power to acquire, manage and dispose of real property. The resulting diffusion of responsibility for the performance of real property management functions has meant a serious lack of coordination and uniformity among the offices concerned.

The granting to state agencies over the years of authority to manage real property has created a real reluctance on their part to look to a coordinating agency for guidance. Agencies follow their own procedures, often developed by one person, of acquiring, distributing and renting property. A sense of "ownership" over property assigned to their use has developed among agencies which have had responsibility for actually finding and negotiating the acquisition of space when this has been mandated by the General Court. The fact that the legislature holds the only central power to mandate changes in the use of real property contributes to the agencies' sense of control. This sense, however, has made full use of state-owned property difficult, if not impossible, to achieve.

At the central level, where legal responsibility for oversight of agency allocation, acquisition and disposition of real property does exist, it is divided within the executive and between the executive and legislative branches in a way which causes delays and unnecessarily complicated approval processes. Legislative involvement has often been of a narrowly political kind. This is not to say that the legislature does not have a legitimate interest in the process or a legitimate role to play. The legislature ought to play a monitoring role, within clearly established procedures and informed by accurate and timely information. It also has a legitimate political interest in land use--reflecting

the interests of the various constituencies affected by these decisions. But this involvement needs to reflect established systematic procedures and has to be structured so as to avoid interference in what are properly executive branch functions.

Lack of Expertise and Resources

In most state agencies there are few persons trained in real property management; and it is generally not possible to find one staff person familiar with, and responsible for, the real property controlled by that agency. The absence of comprehensive guidelines and advice from a central agency, together with this lack of qualified personnel, has often led to non-fulfillment of minimum standards in the procedures followed.

The lack of personnel at the central level is certainly as striking. A staff of six within the Bureau of State Buildings, along with legal counsel for A&F, is responsible for carrying out all real property tasks assigned to the executive. The vast majority of staff time is taken up with the evaluation of new rental agreements. Furthermore, staff to the Committees on State Administration and Ways and Means have no real estate training and are given no means by which to evaluate real property transactions. Rapid turnover among concerned personnel in both the executive and legislative branches also means that what expertise develops is usually lost.

Inappropriate Political Considerations

Finally, the lack of an enforced set of requirements concerning advertising, disclosure and community involvement allows for the operation of inappropriate political considerations by state agencies, the executive and the legislature. Making the public, and all interested parties, aware of potential transactions seems to be the only way to ensure equal access in a way that eliminates subtle favoritism and outright corruption. Yet the only advertising provision affecting real property is that which requires that notification of a lease request must be placed in the office of the Bureau of State Buildings 30 days prior to execution of the agreement.⁴ The same section of the law mandates disclosure of true lessor interests as part of the rental agreement, intersecting with another provision which requires disclosure of a seller's or lessor's interest in real property.⁵ These provisions have been largely disregarded. Finally, the disposition procedures followed by state agencies indicate a lack of interest in community needs and involvement.

These larger issues - the diffusion of responsibility, lack of resources and importance of political considerations - are almost impossible to attack in the abstract. The following discussion, therefore, breaks these down into specific structures and procedures which have created problems in the real property areas but which the Commission believes can be rectified.

Information on Property

The State Comptroller is responsible, under the law, to keep a record of "public property." The Real Estate Manual, published annually pursuant to this provision, does describe real property in terms of the controlling agency, location and condition. The Manual, however, does not indicate the extent to which facilities are occupied. Nor does it include information on independent authorities such as the MBTA or Massport. Many people interested in this kind of information hesitate to use the Manual because it is perceived to be inaccurate, a perception which is heightened by the fact that no verification is made of reports submitted by agencies. Instead, the Comptroller simply sends the previous year's copy of the Manual to agencies for an update. The temptation to send back the forms as received is obvious.

The Comptroller does recognize that information concerning real property should be of benefit to the "Ways and Means Committee, the Budget Bureau and the Division of Building Construction."⁶ In the preface to the 1979 Manual (the most recent version available), dated 1971, the Comptroller refers to Section 31 of Chapter 7 (actually deleted in 1966) which gave the Commission on Administration and Finance the power to authorize additions to or deletions from the report. This reference suggests that the inventory was designed to offer help in A&F's evaluation of agency requests for the acquisition of space.

In fact, the one effort to make such use of the Comptrollers's Manual of which the Commission is aware was not successful. The Office of Space and Property Allocation, in existence within A&F from 1977-80, did prepare lists, manually, of property owned by county and town or city for use by agencies in search of space. The same office made this information available to capital outlay analysts for A&F. In the former case, the lack of indication of facility utilization made the list of limited use to the few agencies aware of it. In the latter case, the procedure was abandoned in 1979.

The lack of a system for locating deeds and other real property records underlines the difficulty of assessing the existence and condition of the state's land and buildings. By law, the State Treasurer is required to keep, "all deeds and instruments conveying real estate to the commonwealth." In conversation with the Treasurer's office, however, Commission staff was told that it keeps only the few deeds which are sent to it by state agencies.

Allocation

Given the fact that there exists no useful analysis of the amount of space which the state owns, rents or leases out, it is impossible to assess on a comprehensive basis whether space is unevenly allocated; or whether state property is going underutilized while more is being acquired. Individual instances described below, however, suggest that systemic problems in real property management have resulted in underutilization in certain cases, and overcrowding in others.

The executive and the legislature are currently responsible for assigning the use of space in the Government Center, other state office buildings, and so-called surplus properties, while individual secretariats and state agencies generally perform this function regarding buildings which they occupy. But administrative procedures employed within this framework are not carried out in a coherent, coordinated fashion. The management of real property by individual state agencies has not lent itself to equitable space use. The involvement of both the executive and the legislature in the execution of certain real property transactions has resulted in lengthy delays and the operation of inappropriate political concerns. Furthermore, the lack of important information and expertise available to perform substantive reviews brings into question the usefulness of these approvals.

Findings of the Governor's Management Task Force of 1976, that the amount of space used per person in Massachusetts' state buildings exceeded the normal industrial standard by 42 square feet, suggest that real property has indeed been underutilized.⁸ This discrepancy can most likely be attributed, in large part, to the placement of responsibility for sharing state-owned space with the controlling state agency. Under this system, the "host" agency assents to the use of space by a "using" agency, setting terms of duration and maintenance costs in a written agreement.

It is symptomatic of the real property management system that few participants can cite the legal basis for agency "control" which governs the allocation process. Citations have been made of statutory grants of power to agencies to administer property in accordance with special trusts, or to administer grants or devises of land; the force of capital outlay authorizations which mandate the acquisition of property for a particular purpose; and the force of land transfer bills, whereby the legislature assigns control of real property to an agency through the passage of a bill.⁹ Furthermore, because only in the case of two state agencies does the law explicitly require that real property be acquired in the name of the Commonwealth, some real property is in fact held in the name of an agency, board of trustees of a facility, or other entity.¹⁰

While the Commission finds in these requirements no legal impediment to coordinated space management, it is clear that current attitudes do act as a barrier. An illustration of difficulties encountered in the current system is provided by the fact that a request made by the Department of Environmental Quality Engineering to use vacant space at a facility under the jurisdiction of the Department of Mental Health was turned down when a new Mental Health Commissioner decided that he wanted to keep the unused space.

The difficulties encountered by a legislatively-mandated land use program reflects a similar lack of coordination among agency interests. The Department of Food and Agriculture is authorized by statute to rent out state land for agricultural purposes, but must contract with other state agencies to administer the land. The Department finds, however, that most agencies, including A&F, are unwilling to share land with it. This is especially interesting given the current situation in which DMH, the state agency which holds the largest share of real property, is planning the disposition of properties under its control. A DMH memo states, in describing the planning process:

The Department of Mental Health is seeking to dispose of about 600 acres of land in the coming fiscal year...the potential reuse of the excess land associated with some of the Commonwealth's large institutional facilities presents an exciting opportunity to support economic and community development goals...The basic priorities for the re-use of the sites have been defined - creation of jobs and tax revenues is the paramount concern, with secondary interest in residential development. Therefore we assume that other types of uses - open space and recreation, institutional, etc. - have a lower priority, and in fact would be considered only for parts of the sites judged unsuitable for income-producing uses, or where there is a clear case to be made for a public use, and presented by appropriate agencies or by the local governments involved.11

Finding ways to use space in a way which implements the programs of other state agencies is clearly, then, not the priority of any individual agency.

Where a central agency is involved in the approval of arrangements to share space, one might expect the state's interests to be better protected. In fact, both the executive and legislature are responsible for approving AF-16 agreements entered into between a "host" and "user" state agency to share state-owned space, acting respectively through the Bureau of State Buildings, and the Committees on Ways and Means. The legislature makes its role in this process explicit through the inclusion of language in the annual appropriation act.

Although The Bureau of State Buildings is now performing as thorough and expeditious a review as possible, serious backlogs have occurred, causing approval delays in some cases of 1-2 years. The unauthorized moves made during this time period make a mockery of the requirement for approval. Its current usefulness must be questioned for two other reasons as well. First, it is unclear exactly to whom this provision applies. Some agencies submit agreements

for what the BSB would consider an internal matter, while others do not. Second, neither the BSB nor any other agency has the authority to alter space arrangements between agencies or to mandate that space be shared. The focus of responsibility for space allocation, therefore, is difficult to find here as well.

Even where the executive and legislature do have statutory authority to assign the use of space, it is difficult to locate decision-making responsibility. By law, the Superintendent of State Buildings assigns the use of rooms in the State House, Government Center area buildings (McCormack, Saltonstall, and Lindemann), and state office buildings in Springfield and Pittsfield, with the exception of those used, "by either branch of the general court or any committees or officers thereof, except with the written consent of the presiding officer of the branch using such rooms."¹² It is formally acknowledged, then, that the Speaker of the House and Senate President control most of the space in the State House. The Commission was also told that, officially, space allocation in the other buildings is carried out by the Assistant Superintendents of State Buildings who occupy the individual structures.

Unofficially, however, the political basis of space allocation in all of the Government Center buildings has been raised many times in conversation with those involved in the process. One building superintendent described orders being handed down to him by the Superintendent of State Buildings to approve space use for agencies with political clout, a phenomenon particularly associated with the inauguration of a new administration. The same Assistant Superintendent told Commission staff that he was unable to keep track of space assigned because many agencies moved in; without his authorization, during the weekend. It should not be surprising, then, that an A&F administrator found that 66 square feet per person had been allotted to one agency in a Government Center buildings, far below the standard mentioned in the Governor's Management Task Force Report of 1976. Nor should it be surprising that resultant overcrowding or underutilization and adverse effects on weight distribution and heating and ventilating systems within a building occur. In at least one Government Center building, for example, space was used in a way which unnecessarily required an increase in air-conditioning capacity.

The operation of political considerations in the allocation of space is not, of course, confined to the executive. Concerning an area strictly under legislative control, the Special Commission found that it was impossible for legislators holding meetings to which the Commission was invited to secure the use of rooms in the State House which are controlled by the House Speaker. More difficult to define, but apparently more pervasive, is the effect of a close

relationship between the legislature and the Bureau of State Buildings on space allocation in the Government Center buildings.

Distribution of spaces within the McCormack building parking garage provides an illustration of the lack of accountability in allocation of space. In investigating the possibility of charging rent for the spaces, an A&F manager found that garage personnel had been instructed not to talk to him. He did find, however, that there was no system in place for distinguishing between individuals currently authorized to park there and others. Granting of authorization to park, on the other hand, does not seem to follow a rational model either. It is apparent that the legislative leadership is responsible for allocating spaces within that branch, and that legislative staff members sometimes receive parking privileges before higher-ranking executive branch personnel.

Where responsibility for allocating space is clear, it tends to operate in a vacuum. The Bureau of State Buildings, for example, assigns the use of space in surplus properties, the great majority of which were Mental Health and Youth Services facilities closed in 1974. Although there are currently only seven such properties, there is an administrative procedure in existence for agencies wishing to vacate facilities and turn them over to the Bureau.¹³

Many of the surplus properties had been neglected, however, to the point where major renovation was required before they could be used. Property acquired in Topsfield in 1971, for example, was "ravaged," in the words of one local resident, by arson and vandalism during a six-year period of vacancy. Although A&F seems to have recognized the potential for use of such space in a 1979 budget request for renovations to state-owned property, it remains to a large degree unexploited. In the absence of any major renovation effort, then, there seems to have been little interest in making the best use of these surplus properties. In 1976, for example, the Governor's Management Task Force wrote that, "many state-owned buildings are totally or partially vacant, particularly in institutional areas," and that, as a result, "unnecessary lease expenses are being incurred."¹⁴

Similarly, the General Court's responsibility for approving transfers of jurisdiction over land operates in a kind of vacuum. The legislature assumes sole authority for the transfer of control over land between agencies (as well as the transfer of title to land between the Commonwealth and another entity). Indeed, Article 97 of the Massachusetts Constitution is explicit in requiring that, "lands and easements taken or acquired...[for] the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources shall not be used for other purposes or otherwise disposed of" except by a two-thirds vote of the General Court. The Commission

believes that the legislature has overreached, however, in citing the judicially derived "Doctrine of Prior Public Use" in asserting a sovereign right over all land questions. While the "doctrine" applies to land whose use is changed to one inconsistent with its preceding use, the legislature makes no distinction between land transfers in this way, requiring at least majority approval of its members for transfers in land use.

The Commission raises this legal question because it feels that the legislature has been functioning in this regard without sufficient information about overall land use issues. In fact, politics has been described as the overriding factor in consideration of any land bill which goes before the General Court. All such transfers must be put in the form of a bill and are reviewed by the Committees on State Administration and Ways and Means only, before being sent to the legislature. A staff person for the Committee on State Administration suggested that it had no way to evaluate the real property transfers filed with it. Many bills reappear year after year, being passed or rejected primarily for political reasons. The suggestion here is, clearly, that such transfers must relate to some kind of land use policy, and not attempt to take the place of management prerogatives to reassign use of building space where necessary.

To recap, on the agency level there is little ability or incentive to insure that existing space is evenly distributed and utilized before more space is acquired. On the central level the executive and the legislature share allocation powers in a way which results in lengthy delays at best, and the operation of inappropriate political considerations at worst. It seems unlikely, furthermore, that any review performed is thorough, as in no case does the approving agency, committee or body have available to it information which would inform decisions concerning use of space or the acquisition of more space by any one agency.

Acquisition

While similar systemic problems appear in the acquisition of real property - from selection to appraisal, title search and negotiation - it seems that responsibility is even more diffuse and procedures even harder to discern than in space allocation. In the case of most state agencies, the legislature must appropriate funds for a particular purchase or taking by eminent domain. Generally, the legislature makes an agency responsible for the acquisition in capital outlay language and may impose some limited requirements on the number of appraisals required before the acquisition is made. In certain circumstances, however, the Secretary of A&F is mandated to make an acquisition and is further responsible, as the state's fiscal officer, to approve purchases of real

property. Finally, where agencies have funding sources separate from that of the General Fund -- as in the case of the Department of Public Works (DPW), the Highway Fund -- broad acquisition powers have been granted and no such approval is consistently required.¹⁵

The Commission has found it extremely difficult to track down the procedures employed in the acquisition of title to, as opposed to a temporary rental of, real property by any of the entities mentioned. Only in the case of the DPW, where federal guidelines are followed because of funding sources, were written standards available. Where Commission staff was able to find personnel nominally responsible for property acquisition, they were often referred elsewhere for information. What the Commission did learn indicated a serious lack of expertise and guidelines to aid in the acquisition process.

The legislature receives funding requests for acquisition of real property for inclusion in the capital outlay budget. Within the capital outlay bill itself, parcels to be acquired are occasionally left unspecified. In some of these cases no supporting material is, in fact, provided to describe the intended acquisition because no land has been chosen. According to a capital outlay analyst for the Senate Ways and Means Committee, where a parcel is unspecified in the act, the Ways and Means Committees retain approval power over the acquisition. Capital outlay language also may mandate required appraisals, but the variety in the number required reveals no consistent pattern. Nor could the analyst suggest one. Furthermore, although prices have not been negotiated, the legislature appropriates an amount which may be spent, sometimes based on vague projections.

The procedures employed by the General Court in this area raise a number of questions. The lack of analysis which can precede an item's inclusion in the capital outlay bill has already been identified as a cause of delay and a factor in the acquisition of sites of inferior quality. The entrance of inappropriate political considerations has been facilitated by the lack of contextual or factual data. The legislature does not have a staff adequate to review an acquisition before or after capital outlay authorization. Finally, the amount of money appropriated for acquisition has coincided in some cases surprisingly closely with appraisal figures.

The executive does not fill the gap here. It has no further capacity for analysis, potential real property acquisitions, either before or after capital outlay authorization, than does the legislature at this point, except in an occasional crisis situation. In fact, it has been suggested that its considerations are also largely political and that it often causes delays itself.

There is, then, no effective oversight of agency acquisitions, although agency procedures vary. The chief engineer for the Department of Mental Health, for example, told the Commission staff that he felt it was unnecessary to do a technical review before acquiring property. Some agencies are able to secure funds for site studies while others are not. Furthermore, although A&F distributes to state agencies a list of appraisers prepared by DPW, it is up to each agency to review the appraisal itself. Only the DPW has its own appraisal review board.

The Commission can use its best known subject matter, that of the University of Massachusetts at Boston, to illustrate problems of delay and lack of technical investigation which can result from an unorganized acquisition process. Because the University had not anticipated that site selection would take as many years as it did, the institution increased enrollments while the project was at a standstill. Furthermore, its final choice became controversial when the possibility was raised that the Columbia Point landfill contained lethal methane gas. In fact, the legislature delayed work on the project so that a study could be done to determine whether the site was indeed suitable for building. The design firm of McKee-Burger-Mansueto was awarded extra compensation in November, 1972 because of cost increases which occurred during the delay.¹⁶

An area of acquisition in which the roles of the executive and legislature have been extremely visible, on the other hand, is that of space rental. Until the passage of the FY 1981 appropriation act, agreements for the \$14 million spent annually for space rentals were reviewed by the Superintendent of State Buildings, the Budget Bureau, the Committees on Ways and Means, the Commissioner of A&F and the Governor. The cumbersome and confused proliferation of approvals has had a negative effect on the Commonwealth's ability to rent space of decent quality. The length of the procedure - on the average, from 60-80 days - has caused lessors to withdraw proposals, and has made them generally reluctant to rent to the Commonwealth.

Despite the intricate approval process which has been followed, no central agency has until very recently been available to advise agency personnel in search of rental space. Each agency is on its own in trying to locate vacant state-owned space and, subsequently, rental opportunities. Acceptable rental rates have even differed between the Committees on Ways and Means, and the Bureau of State Buildings.

In many cases, then, the Commonwealth has been put in a position of having to acquire inferior rental properties. A case in the Department of Public Welfare illustrates this point. Space which it occupied in Fall River was described as "substandard," with "roof leaks and poor heat distribution," as well as

"...inoperable doors....," poor repair service, and an undependable elevator.¹⁷ Furthermore, photographs shown to the Commission staff of agency rental properties have suggested that the occurrence of such problems is not limited to a few instances.

Disposition

Disposition of real property has been the most difficult of the three processes (allocation, acquisition, disposition) to uncover information about. It is clear that the legislature votes on transfers of title to state-owned property, the vast majority of which are to cities and towns. The Universities and DPW have extraordinary powers here, being authorized to sell property which they occupy.¹⁸ The legislature also claims the right, through the AF-16 process, to approve agreements made by state agencies to allow, "any private agency the use of such land, buildings or facilities under its control or jurisdiction."¹⁹ Yet a number of state agencies also have the right to rent out property under their control. These include the Division of Drug Rehabilitation, the Department of Natural Resources, and the Office for Children, among others.²⁰ The Commission has been told that these powers are carried out in some cases without legislative approval.

Whoever has the official authority for disposition, however, it is apparently no more possible to focus responsibility in this area than it is in other categories of real property management. The Committee on Post Audit found, for example, that proceeds from rentals were being deposited in the Quinsigamond Community College Scholarship Fund with the knowledge of administrators, rather than into the General Fund as required.²¹ In other cases, unauthorized private non-profit agencies were found to be occupying state property. In still others, the state had never charged for maintenance costs.

In most jurisdictions, other governmental bodies are canvassed to determine their need for surplus property before disposition to the private sector. The disposition of state-owned property by individual agencies or by A&F does not present these opportunities systematically.

Neither the disposition, the acquisition, nor the allocation processes inform or include representatives of affected communities. Strong opposition to administrative plans cannot be surprising under these circumstances. One role served by having planning done by all interested parties is that of keeping the process open and political judgements and decision-making above-board. Advertising and disclosure also serve this purpose.

SOLUTIONS TO PROBLEMS OF REAL PROPERTY MANAGEMENT

The Division of Capital Planning and Operations

Attempts are being made to improve real property management by the state. The infusion of expertise into the Bureau of State Buildings has stimulated the organization of records, increased communication among state agencies, and the development of a management information system. The Facilities Management Department of the Massachusetts Institute of Technology has been working with the state to computerize existing information on rental properties. As a result, the Bureau expects to be able to analyze costs, the advisability of consolidation, and other factors in the rental planning process.

In addition to these improvements, however, there is a need for a central authority that possesses both expertise and adequate resources and that operates within the framework of a clear legal structure and systematic guidelines, to manage the allocation, acquisition and disposition of the Commonwealth's real property. The Commission has recommended such a solution, and the recommendations have been embodied in Chapter 579 of the Acts of 1980.

The Division of Capital Planning and Operations will be responsible for preparation of the capital outlay budget for A & F. Central to the function of the Deputy Commissioner of Capital Planning and Operations, therefore, is the establishment and maintenance of "a comprehensive inventory of the real property owned, rented or otherwise occupied by public agencies." The inventory is required under Section 40K and will serve the planning efforts which currently suffer from a lack of information, as well as the allocation functions described earlier. Building reuse efforts advocated and aided by the Department of Community Affairs should be helped by the inventory's "general description of the size, type and use of real property under the jurisdiction of" independent agencies, counties, cities and towns, in addition to the "detailed description of the allocation, utilization and condition of real property used by state agencies."²²

The Division will also be responsible for collecting and maintaining, under Section 40K "all certificates of title, copies of deeds, records of sale, rental agreements and other pertinent records relating to the real property acquired for the use of state agencies." The Comptroller's office has itself suggested that property records include "(1) a copy of the deed and registry receipt, (2) a copy of the voucher(s) paying for the property (3) a copy of the appraiser(s) report(s) regarding the particular property, (4) maps and/or pictures, if available and (5) a copy of the legislation providing the funds for the acquisition(s)."²³ Where such records are necessary to the functioning of a

state agency--that is, where it has an active real property management staff--the Director of Capital Planning and Operations will be able to delegate responsibility for record maintenance to the agency, retaining oversight of agency record-keeping.

The distinction made in the record-keeping responsibility of the Division and the existence and legitimate operation of agency concerns and expertise is embodied in the Commission's legislation. In the real property management area, accountability is focussed on A & F as the manager of the state's assets. The numerous interests involved in acquiring and using property, however, are recognized in the power granted to A & F to delegate the authority to actually perform various acquisition tasks; and the direction given to A & F to consult with agencies and secretariats in the execution of transactions which affect them. In most cases, power is assigned to the Commissioner of A & F rather than to the Deputy Commissioner of Capital Planning and Operations. If anything, then, the Commission's legislation is based on the premise that real property management by the state is not and cannot be performed in a rigid fashion.

The real property management provisions of Chapter 579 of the Acts of 1980 (SECTIONS 7-12; Sections 40D-40E) centralize responsibility for the allocation, acquisition and disposition of real property on behalf of state agencies. State agencies thus affected include those defined under Section 39A as "a state agency, board, bureau, department, division, section or commission of the commonwealth or county," but counties are excluded in real property matters. Included, therefore, are Universities, the DPW and Metropolitan District Commission. Section 40E clarifies the status of existing delegations of authority which have historically prevented the development of responsible management. Accordingly, the Deputy Commissioner is to "acquire, control and dispose of real property in accordance with the terms and provisions" of these delegations. Furthermore, under Section 40E, "the deputy commissioner may delegate to state agencies responsibility for the acquisition, control, and disposition of real property" as provided for in Chapter 579. "When such responsibility is delegated to a state agency, the written approval of the deputy commissioner shall be required before the transaction is finalized." Standards and guidelines are to be promulgated by the Deputy Commissioner to aid agencies which they do engage in real property management activities. The result, then, is the creation of a supervisory entity with the available resources and flexibility to perform the function where it is judged to be appropriate.

With the preceding basis established, the following paragraphs outline the responsibilities assigned to the Division of Capital Planning and Operations, and the Commissioner of A & F as its superior. In some cases, requirements have

accompanied assignment of such responsibility. In others, the Commission has become aware of impressive real property management procedures employed in other jurisdictions but did not write them into law because of a desire to avoid being overly-specific and rigid. Further recommendations have therefore been included for implementation of the legislation. In still other cases the Commission is concerned with the way in which the legislation was altered during the legislative process, and recommends a return to its original version.

Allocation

Under Section 40F, the Deputy Commissioner of Planning and Operations is made responsible for the assignment of space currently under the jurisdiction of the Bureau of State Buildings. The Bureau will no longer have any space allocation responsibilities. Under SECTION 23 of the legislation, the current procedure for obtaining written permission of the legislative leadership for the use of certain rooms in the state house is retained.

The Deputy Commissioner is also required to "assist in the preparation" and to "approve of plans for the organization of all space within and around buildings and appurtenant structures used by state agencies." Essentially, then, the activities of the Division will be posing a challenge to the familiar notion of agency "control" over occupied space. The requirement of SECTION 10 that "title to real property held in the name of or on behalf of a state agency shall be transferred to the name of the commonwealth" is to insure that its management, from allocation to disposition, will "be subject to the jurisdiction of the division of capital planning and operations."

The Deputy Commissioner is also given explicit authority to transfer the use of space, within buildings and under limited circumstances, between state agencies. Section 40F, which grants this power, stipulates that "no such transfer within or between state agencies which involves either a change in the purposes for which such building is currently used or a change in use of excess of fifty percent of the usable floor space, shall be without the prior approval of the general court." Further, the Deputy Commissioner can only make such transfer with the written approval of the Commissioner of A & F, and "based on a determination...made with the advice of the executive heads of affected agencies and secretaries of the executive offices in which such agencies are located, that such property is not needed, is underutilized, or is not being put to optimum use under current conditions." Finally, the Ways and Means Committees must be notified of any such transfer thirty days prior to its final authorization.

In fact, the Commission's legislative real property recommendations gave the Deputy Commissioner, with the checks provided above, the authority to transfer

use of buildings and land without the limitations imposed above. In rewriting the bill, the Committee on State Administration argued simply that without the check provided by its review of real property transfers between agencies, agencies would be in a position to make important programmatic changes with no authorization from the legislature; e.g., the establishment of a prison in a public health facility. The Commission argued in response that review of space use was not the place to establish legislative oversight of agency programs.

The Committee's change also makes its disposition procedure inconsistent. That is, under Section 40F, the Deputy Commissioner may, with the advice of state agencies and secretariats, "determine that real property is not needed for the use of any state agency." After such determination, the Deputy Commissioner may enter into agreements with public agencies, other than state agencies, to use such property for up to five years. The same approval conditions apply here as to transfers between state agencies. The General Court has said, then, that the state's real property manager can transfer the use of space and land between the state and other governmental bodies; but that he or she can only transfer building space, and under limited circumstances, between state agencies.

The Commission also takes exception to the requirement imposed by the Committee that any transfer "shall only be made when the General Court is in session" except when "the deputy commissioner certifies in writing that an emergency exists." "Emergency" is defined under Section 40E as "any situation caused by unforeseen circumstances which render currently used real property unusable or unavailable for the purpose intended and which creates an immediate need for other real property to preserve the health or safety of persons or property." In requiring this language, the Committee insisted that it reflected the status quo. They argued that the executive is currently limited by legislative session in approving or entering into space use agreements. The Commission subsequently learned that the executive is not limited in processing AF-16 agreements during this period and sees such a limitation as a severe impediment to proper space management.

Finally, SECTION 11 of Chapter 579 recognizes the asserted barrier posed by the "Doctrine of Prior Public Use" by making explicit the General Court's intent concerning transfer disposition of state property. It also recognizes the effect of the requirements of Article 97 of the Massachusetts Constitution on the transfer and disposition of real property.

The Deputy Commissioner is required to promulgate standards for the purpose of making the procedures employed by his or her office public, and to provide guidance to agencies which are delegated responsibility for space management functions. Under Section 40L, these included "(a) a determination of the amount

and type of real property needed to accomodate functions performed by agencies of the commonwealth..., (e) procedures for determining when real property is not needed, is underutilized, or is not being put to optimum use and (j) the organization of space within buildings to maximize utilization."

Acquisition

Under Section 40F, the Deputy Commissioner is authorized to "acquire real property by gift, purchase, devise, grant, eminent domain, rental, rental-purchase or otherwise on behalf of state agencies." As has been mentioned previously, he or she can delegate responsibility for any or all aspects of a physical acquisition--from selection to negotiation--to a state agency, while retaining approval powers. Standards promulgated pursuant to Section 40M, relating to the acquisition of title to real property include "(g) the method of procurement of independent appraisals, the number of appraisals, and the review of such appraisals required; (h) procedures to be employed in determining prices and terms for the sale, rental or purchase of real property as mandated by law and regulation; "...and "(i) the satisfaction of requirements for the acquisition and disposition of real property as mandated by law and regulation." Subsection (i) addresses the problem of coordination between agencies with interests in property which has been noticed in a number of instances of site selection by the state.

In this context, the intended operation of the "Capital Outlay Review Board," established under A & F in 1971, suggests some potentially useful procedures. The Board was unable to carry out its purpose successfully because it was never adequately staffed. Its responsibility, however, was to review sites previous to submission of request for funds in the Governor's capital outlay budget message. This included requests of the appropriate state agencies "to review sites for health, safety, environmental and engineering considerations." If a site was found to be technically acceptable, the Board authorized up to three independent appraisals of the property depending on its estimated value. A&F reviewed the appraisals, as did the Right of Way Bureau of the DPW in special cases. Upon acceptance of the appraisal, the Board approved funds for a title examination which, when received, was forwarded to A & F and the Office of the Attorney General for approval. With an approved appraisal and clear title, sale negotiations would be held.²⁴

The goals represented by the procedures outlined above--namely, coordination of interests, and oversight of technical investigation, appraisal and negotiation procedures--are commendable. The Commission is not necessarily endorsing the specifics of the procedure, since it recognizes the difficulty in aligning

planning efforts with capital outlay authorizations. It does recommend, however, that the executive attempt to employ substantive and timely investigative procedures in fulfilling its obligations under Chapter 579. The Commission also suggests the use of options on the purchase of land to encourage a closer relationship between technical investigation and enactment of the capital outlay budget.

In addressing problems uncovered in the area of space rental, on the other hand, the Commission found it necessary to revise in specific language the roles played by the executive and legislature. First of all, the Division aids in the process of appropriating funds for space rentals by reviewing agency requests for such funds, under Section 3 of Chapter 29. Secondly, under Section 40G, the Deputy Commissioner recommends to the Budget Director "the maximum rate to be paid for the rental of space by type and geographical area." The Budget Director then recommends "the approval of such costs by the General Court, as part of the annual appropriations act." The Deputy Commissioner is subsequently able to enter into rental agreements at rates which do not exceed those approved by the General Court. The Ways and Means Committees are notified 30 days prior to the final authorization of any such agreement. Again, there is a limitation on the processing of agreements to the period when the legislature is in session. The Commission recommends that this provision be eliminated.

Section 40G also specifies that the Deputy Commissioner's budgetary review include a recommendation on "the maximum percentage to be paid for the escalation" of rental costs. To date, the executive has interpreted the requirements of current law to prohibit the use of clauses in rental agreements which would allow lessors to pass on increases in operating or tax costs. Instead, lessors must submit proposals for five-year leases which take cost increases into account. Lessors renting to the state, therefore, have favored the use of tenancy-at-will agreements which enable either the tenant or lessor to change the terms of the rental. In many cases costs have risen dramatically under these TAWs. A recent opinion of the Attorney General makes clear that the executive does not have the legal authority to make use of escalator clauses.²⁵ The Commission hopes that the procedure outlined under its legislation will enable the Commonwealth, like the Federal Government and other jurisdictions, to make use of these clauses in a way which attracts lessors.

The General Court has itself revised the rental approval procedure with the FY 1981 budget. Section 16 of Chapter 329 of the Acts of 1980 requires simply that the Commissioner of A & F "report quarterly to the house and senate committees on ways and means any lease negotiated...or any agreement providing for a tenancy at will or other rental of space." These quarterly reports "shall

include by agency, the amount and location of such rental space, any new or additional space, the duration of the lease or agreement, the cost per square foot of such rental space, any increase or decrease in said cost, and the cost of the preceding lease or agreement." The Commission is pleased that in the period before its legislation takes effect, rental approval procedures will be streamlined. It is also pleased that a regular provision of law, as opposed to a budget section, will regulate the process beginning on July 1, 1981.

Disposition

One disposition method available to the Deputy Commissioner has already been mentioned. He or she may, "with the written approval of the commissioner," "enter into agreements for the use of ... available real property by public agencies other than state agencies or the federal government, for a term not to exceed five years." It is required that the Commonwealth "be reimbursed for at least the cost of maintaining real property under such agreement."

Where the rental of state-owned real property to a private entity is concerned, however, the approval of the General Court is required. The Commonwealth must charge fair market rates in the rental of such property. In the case of rental by the state to other governmental entities or to a private entity, the Deputy Commissioner is mandated to establish rates to be charged under Section 40L.

Furthermore, under Section 40F, the General Court must approve agreements for the use of state-owned space by governmental entities for a period to exceed five years, and any transfer of control or title over state-owned property to any entity. It is the Deputy Commissioner's responsibility here, with the approval of the Commissioner, "to recommend to the general court for its approval, the sale, rental or other disposition of real property." In addition, where any such disposition is initiated by a source other than the Division, it is required to "expeditiously review and recommend approval or disapproval" of any such proposal to the General Court. Again, fair market rates must be charged in the sale of real property to a private party.

There are a number of provisions relating to the management of real property included in Chapter 579, which apply more generally to allocation, acquisition and disposition functions. Under Section 40H, for example, any purchase, rental or sale of real property by the state must be advertised for thirty days before a proposal can be accepted. These advertisements must be placed "in the central register published by the secretary of state," and additionally, in the case of over 2500 square feet of property, "once each week for four consecutive weeks in newspaper(s) with a circulation sufficient to inform the people of the affected

locality." Also to be placed in the Central Register is the name of "the individual or firm selected as party to any such real property transaction, and the amount of such transaction."

Opening up the processes to public inspection and the widest possible participation should not stop with advertising requirements, however. Under Section 40I, therefore, the law requires that at least 60 days "prior to any purchase, rental, sale, or significant change in use of real property," that local and regional officials be notified of the intended change. Furthermore, when the change involves more than two acres of land, at least thirty days "prior to such sale, purchase or change in use" a public hearing must be held "for the purpose of disclosing the conditions or reasons for the proposed action."

The timing and coordination of efforts to notify agencies of available space, to notify local officials as required, to advertise, negotiate and to hold public hearings; as well as to receive General Court approval is clearly not simple. Yet real property management is not a simple task. Procedures to accomodate the needs and interests of all parties, once in place, should facilitate the process. Furthermore, it is indisputable that other jurisdictions have put these systems in place. There is no permanent barrier to Massachusetts' ability to do the same.

One further provision specifically addresses the potential for conflict-of-interest and corruption in real property management. In Section 40J the Commission has combined and expanded two sections of the law which required that individuals renting or selling property to the Commonwealth disclose the names of all persons with beneficial interest in the property. Section 40J consolidated these provisions, expanded them to cover situations in which the state was disposing of real property, and provided that the names and positions of public officials or "any employee of the division of capital planning and operations disclosing beneficial interest in real property pursuant to this section" be supplied to the State Ethics Commission. Section 40J also addressed for the first time those who plan to acquire beneficial interest in the property in question. Through this provision the Commission hopes that cases in which "straws" are used to purchase property and any apparent instances of favoritism in real property transactions will be minimized.

In sum, the Commission drafted legislation which would focus accountability in the performance of real property transactions on the public official and agency most familiar with its potential and effect -- namely, the entity responsible for capital facility planning and construction in the Commonwealth. It added a public element to these processes in the inclusion of advertising, notification, hearing and disclosure requirements. Lastly, it has addressed

specific deficiencies in the availability of information and record-keeping as well as standards. The legislation has, therefore, directly addressed the problem of statutory fragmentation described earlier. It has created the potential for making resources available by centralizing expertise and establishing an management information system; and has tried to minimize the operation of inappropriate political considerations through publicity requirements. In all three areas, however, the success of these legislative reforms will be dependent upon cooperation among individual agencies, the executive and the legislature, and the appropriation of adequate resources by the General Court.

PROGRAMMING: INDIVIDUAL PROJECT PLANNING

The building program--the essential initial element in every capital project--has been the most neglected element in the Commonwealth's capital outlay activities. The program is a detailed statement of the functional needs of a building's prospective user: the background, assumptions, objectives, budget and scheduling requirements. It is intended to serve as a prospectus in the planning process for the using agency, the BBC, Administration and Finance and the legislature. It is also intended as a set of guidelines and design requirements for the architect. It has further implications for the construction process and the post-occupancy evaluation process. This section will discuss the problem and the Commission's proposed solutions.

RESULTS OF INADEQUATE PROJECT DEFINITION

Lack of good programming is one of the most serious problems facing the Bureau of Building Construction (BBC) according to its own Director, Stuart Lesser.¹ The BBC does not have the staff or expertise to prepare programs for projects under its jurisdiction. Joseph Glynn, Chief of the BBC's long-range planning section, told the Special Commission that the responsibility for programming lies with the user agency;² yet the agencies, like the BBC, lack the in-house resources with which to prepare programs for buildings. Even when programs are prepared (usually by paid outside consultants), the BBC does not make a substantive review of the program. Other agencies administering their own building projects demonstrate as little (or less) capability to do programming. For some agencies such as the Department of Community Affairs (DCA) which builds one type of building over and over, there is not necessarily a pressing need for programming. Some agencies, however, have been charged with the development and planning of complex and unique projects, such as campus centers and mental health centers; in such projects initial programming plays a crucial role.

As a result of the BBC's and the agencies' lack of programming capability, projects often are authorized by the legislature before an adequate program has been developed. Joseph Glynn said that, at least in the past, project requests have been sent to the legislature with incomplete or inadequate program information, even in terms of the basic BBC form (CO1) which, itself, is not sufficient to be the basis of a thorough program.³ The descriptive language appearing in the capital outlay authorizations of the acts of the legislature provides similarly inadequate definition of program requirements. Also, projects

are often added in legislative sessions -- also without adequate programs having been prepared. Under these circumstances, it is hard to see how the legislature can make informed decisions on the millions of dollars it is committing itself to spend.

The experience of the Department of Corrections well illustrates the Commonwealth's chronic lack of programming capability. Corrections, which has had one of the largest capital outlay programs of any department under the BBC (\$89 million authorized since 1968),⁴ has never had the in-house staff necessary to prepare adequate programs, either for capital construction or for capital maintenance projects. Because of the department's erratic workload in capital projects, full permanent staffing has been considered impractical, according to Joan Belle-Isle, former head of capital planning for that department.⁵ For years each institution was left on its own to plan, conceive, and program its projects. Even when some of these functions slowly began to be centralized, starting in 1975, Ms. Belle-Isle found that "frequently the institutions did not have the information at hand to adequately describe the project...." Other state agencies were unable to lend technical personnel to Corrections because they had their own staffing problems. Nor could the BBC fill the void. The result was that the information provided to the BBC and the Legislature was less than adequate for decision-making; cost estimates were often not accurate; and designers were appointed to projects that were not ready for design because the programming stage had not been completed.⁶ Inordinate delays and cost increases; inadequately conceived or planned facilities; and frequent disputes over the intentions of the department, the BBC, or the legislature were the consequences. Delays due to inadequate programming have been as long as seven or eight years, according to James Cusack, head of the BBC design review section.⁷

Delays .

Across the board, delay is the most common and most immediate result of inadequate programming. Many designers complained to the Special Commission of being awarded projects for which there was no adequate program, and of having to prepare a program, even though it was not officially part of their job and the designer is usually not compensated for the extra services involved in filling the gaps of a poorly defined program.⁸ For example, the designer of the Fitchburg State College Special Education Center, appointed in 1966, had to wait five years while the using agency hired a special consultant to prepare a program and establish criteria for the project. During this time, the estimated cost of construction rose from \$1,375,000 to \$9,000,000. When complete construction

documents for the center were finally prepared, the legislature declined to approve construction, and the building was never built.

In testimony before the Special Commission, Foster Jacobs, director of Planning and Plants at Southeastern Massachusetts University (SMU), described a five-year delay in the implementation of a science and engineering academic building at SMU. When the design was revived in 1979, the program had to be completely re-done to suit the changed needs of the school. Moreover, the redesign had to be limited to changes in interior arrangements of rooms only, since the structure and shell of the building had already been designed from the original program and changes to the structure would have been prohibitively expensive.⁹

Even after plans are accepted and construction begins, program problems can delay a project. For example, in the recently constructed academic building for Boston State College, the project was stopped in the middle of construction for almost nine months partly because the using agency decided that it did not like the building designed and wanted something different. New plans were prepared. The contractor gave an estimate of the increased cost. This proved to be too high for the state, so work was resumed based on the original plans. The contractor is now suing the Commonwealth for damages caused by the delay.¹⁰

The problems caused by inadequate project definitions in the planning stages have often been exacerbated by ambiguity in the language of the authorization passed by the legislature, leading to time-consuming arguments as to whether or not a particular item could legitimately be included in the program. For example, the BBC and the Department of Corrections spent six months arguing about whether a double chainlink security fence was included in an authorization for a project to upgrade security at the old MCI Concord Farm.¹¹ A similar dispute occurred in connection with a project to renovate Gardner State Hospital.¹²

When the legislative authorization is unambiguous, it sometimes proves too restrictive. If the program has not been fully developed before the passage of legislation, as in most cases it has not, it may turn out that the needs of the user agency, when finally articulated, no longer fit the language of the appropriation. The result is a return to the legislature to amend the appropriation language, and more delay while this is done.

Cost Increases

Design projects with inadequate programs are often beset by costly program changes as the user agency tries to decide what it really wants. Changes in the scope, cost, or even function of a project can be made during design, sometimes on quite a large scale, without anyone having to justify or take responsibility

for the changes. For example, in the case of the Mental Health Training, Treatment and Research Center in Boston, design was delayed and costs rose from \$6 3/4 million to \$12 million as the Department of Mental Health hired a medical program consultant. The department later rejected the first set of working plans on this project at \$12 million, and requested the architect to carry out major program changes in the building. The second set of working plans was approved two years after the first, at \$17.4 million.¹³

As noted above, the designer is often forced to absorb the design costs of reprogramming. This issue is especially important if the Commonwealth expects the architect to negotiate his fee for the project after being named as one of the three ranked finalists by the Designer Selection Board (DSB). If the design project is ill-defined, the architect will be less able to calculate, and the Commonwealth less able to evaluate, the fee. Indeed, even with the standardized sliding-scale fee arrangements used in the past, the BBC and the designer have often ended up haggling for months over the proper fee, because of differing perceptions as to what the program entailed. Poor project definition can also prevent the DSB from selecting the best possible designer, as the DSB cannot properly choose the designer best suited for the job if it does not have a clear conception of what the project is.¹⁴

Design Failures

Delays and construction cost increases are not the only programming problems in Massachusetts. Perhaps the saddest result of deficient programming is buildings which fail to meet adequately the needs of the users, either through erroneous or imprecise initial statements of needs by the user or through cuts in the scope of the project caused by delays and cost increases as discussed above.

A notorious example of poor programming occurred in the Middlesex County Courthouse, where a jail was built on the top floor. Because of a failure to consider or express the special requirements for this type of facility, the jail was designed with substandard size cells and inadequate fire exits. It has never been used as a county correction facility, as originally planned; it can only be used to detain prisoners brought to the courthouse for trial.

Another example occurred in a Jamaica Plain laboratory building where dangerous organisms are handled. The exhaust and fan system specified in the plans did not adequately protect against contamination. As a result, essential testing for serious diseases has had to be curtailed. This failure was probably due to the program's failure to specify the special needs in this area clearly enough or, although this is less likely, to the BBC's failure to insure that the design conformed to the program.¹⁵

Such problems are not confined to the BBC. At the Lindemann Mental Health Center in Boston, built by the Government Center Commission, psychiatric consultation rooms were designed and built without proper sound insulation, so that a person in one room can overhear conversation and noise in the adjoining rooms. Thus, only every other room is used. In fact, the whole layout of the facility is a constant source of frustration to patients and staff.¹⁶ The mezzanines in this mental health center were built with only a banister to protect people from falling: ceiling-high barriers had to be installed to prevent a possible tragedy. Even though a medical programming consultant was used in this project, the building still failed to meet the needs of the agency when it was finally built, because of confusion and changes of goals on the part of the user agency, and chaotic administrative procedures by the Government Center Commission.

At several projects built by local housing authorities and overseen by the Department of Community Affairs, programming, if any was done, failed to adequately consider the needs of future tenants. A housing for the elderly project in Cohasset was designed and built with steps leading to each apartment, which rendered them inaccessible to handicapped persons in wheelchairs. Temporary sloping walkways were installed later; however, these were too steep to be used by persons in wheelchairs. The town has refused to issue a certificate of occupancy. At an elderly housing project in Duxbury, no safety railings were provided on metal stairs in areas to be used by handicapped persons.¹⁷

Other instances of poor programming include a power plant which has a capacity several times larger than necessary for the facility it serves, and a multi-million-dollar power plant at the University of Massachusetts at Amherst which has never been used because it was (needlessly) located so far from the facilities it serves that, when the long connecting pipelines developed problems, they could not readily or economically be repaired. Programming failures have also resulted in the State's getting almost totally misconceived buildings such as the \$600,000 underground chapel at MCI Concord, located in the middle of the inmates' ballfield and used only occasionally on Sundays. In addition, many design features at Concord are not consistent with the most efficient principles of prison security. On a smaller scale, but no less ridiculous, towers were designed for MCI Concord with searchlights on top, but with no access to change the bulbs except by helicopter.¹⁸

Abandoned Projects

Poor programming may, in extreme cases, result in a project having to be abandoned or substantially curtailed after plans have been prepared. For example, the bids for the ill-fated Health, Welfare and Education (HWE) building

were thrown out by the Government Center Commission in 1968 because, towards the end of the bidding, it became apparent that the building was approximately 90 to 100 thousand square feet too small. (Also, the lowest bid was \$21 million, substantially higher than the architect's estimate.) A subsequent re-design produced plans estimated to cost \$51 million, and in 1969 the project was halted. Over \$1.2 million had been spent for the design of this building. The original plan was for a three-building state service complex consisting of a DES building, the Lindemann Mental Health Center, and the HWE building. But the aborted HWE building has left these departments without the home intended for them, and has left the state service center visibly unfinished -- the building literally stops in mid-air (see photograph in "Design" section).¹⁹

While poor programming does not always create disasters such as those described above, its lesser hampering effects are present in many other state buildings. The result of poor programming may be no more than the annoyance or inconvenience of offices which are too small or too large, spaces which are too inflexible to be adapted to new uses, work areas which are noisy or unpleasant, or areas which cannot be fully or efficiently used. But in these cases, as in the more infamous disasters, poor programming makes a building less useful than it could be, wasting taxpayers' money, both in the unnecessary or exorbitant original cost, and in the added cost of inconvenience and limited utility.

At the heart of the problem of poor programming lies the failure of the Commonwealth to recognize the need for programming and the consequences of poor programming. As the preceding discussion indicates, a glaring need for good programming does exist in Massachusetts. Yet the Commonwealth has rarely invested the necessary resources to do adequate programming, and too often the poor results have been blamed on other parts of the process -- the designer, the agency, the contractor. Of course, the causes of the many disasters in our buildings have often been ones in which planning, programming, design, construction and operational problems are complex, interrelated and seemingly inseparable. However, the real problem lies not with that complexity, but rather with an inscrutability in programming: while the problems in design and construction defects are legion, widely publicized and much analysed, programming simply has not been considered, and therefore, not found as a cause of some of these problems.

HOW PROGRAMMING SHOULD WORK

The Purpose of Programming

Programming begins with the earliest statement of need (e.g., "we need a new

hospital") as part of the planning process, and continues until the building is occupied (changes made during construction that affect the user involve programmatic decision-making). However, the standard program period may be thought of as beginning when the decision is made to go ahead with at least the design or planning phase of a project, and ending with the hiring of an architect to actually carry out the design work.

The user agency is often expected to develop its own programs, but there is no reason why this need necessarily be so. Programming is often a matter of asking the right questions. Indeed, an independent and trained observer can often ask questions and elicit basic and essential information which the user agency may not have come up with on its own. These questions can include standard questions such as how many people will occupy the structure, what work these people will do, whether any specialized equipment will be used in the building, what relationships should exist among the functions, equipment and people in the structure, whether a one-story or multi-story structure is acceptable, or whether special materials need to be used. A professional programmer may well be needed to help the agency formulate its answers to such questions and to determine what additional, more specialized questions need to be answered.

The program articulates the functions, usages, characters, sizes, and, if necessary to the functions, the shapes and relationships of areas of a building. However, a program is not a design, or even a preliminary design, but rather a set of goals for design. The program should tell the architect what to design, but not how to design -- although, in the past, consultants hired to do programs have gone further, drawing schematics for a building's design. Programs may vary greatly in extent of detail. The program for a repair project may be brief (e.g., "repair leaking roof"); whereas the program for a complex project, such as a hospital, may outline in detail the special requirements of each area and space within the building.

A program is also not strictly a feasibility study, although, in the past, these two have often been combined. While the goals of a program are to clarify the user's needs in terms of functions and activities and to use those criteria in determining the necessary intrinsic requirements of the project, the goal of the feasibility study is primarily to determine the reasonable external limits (e.g., of budget) which will determine how, or whether, the project will be carried out.

Programming and planning, while not identical, are intricately linked. Some programming must necessarily be involved in planning (as in determining budgets and in weighing costs and benefits of a proposal), and some planning is involved

in programming (programs must keep within existing budget limitations). Drastic changes of priorities and policies, such as have happened often in the Department of Mental Health, Department of Corrections, and Department of Youth Services, wreak havoc with the programs for buildings. At the same time, a crucial purpose of programming is its use as a planning and managerial tool. Lack of definition of a project, while not the same as lack of need or desirability, may shortchange the project in the planning process. For example, the Fitchburg Special Education Center may have been needed, but the lack of a clear program, and the resultant delays and cost increases, led to the legislature's abandonment of the project.

One of the major benefits of thorough and clear programming is in improved cost estimating. Cost estimates cannot be accurate when no program exists that adequately defines the project and the user's needs. The preparation of an adequate program forces the user agency to articulate its needs; it creates a permanent record of these goals and needs to which the agency may be held, or to which later plans and estimates may be compared; and, finally, it vastly improves the initial cost estimates ('conceptual estimates') that are made in the planning stages.

As John Kenny of the American Association of Cost Engineers told the Commission, a cost estimate based on the square foot area of a building can be within 15 percent of the actual figure, given one hour's effort by a professional estimator. Furthermore, a "systems type estimate, based on the types of functional and mechanical services included in the building, accurate to 10 percent, can be made at a very early stage of the project.²⁰ This should be compared with the much wider margin of error, of up to 1/3 or 1/2, which has been found in the BBC's and other agencies' cost estimates.

A final element of programming occurs after the building has been constructed and occupied: a post-occupancy evaluation by which the users of the building measure the success of the design. The Commission has found little evidence that such evaluation of design has taken place in the Commonwealth on any but the most informal and sporadic basis. Whatever is learned in the process of design, construction and occupancy is not fed back systematically to the project's planners and participants, and thus cannot be used to improve future programs and designs. Such evaluations could be easily instituted, most likely at the time of the expiration of the construction guarantee one year after the acceptance of the building. All those associated with the project could have valuable input -- the using agency and its clients (students, patients, residents) most particularly, but also the architect, contractor and administering agency.²¹ Such an evaluation would assess not only how well the design fit the program, but also

how well the originally stated program fit the users' needs (or perhaps how the agency's policies have changed so that a different program might be needed the next time such a facility is built).

Responsibility and Resources for Programming

While it is generally accepted that the users of a proposed facility should be most closely involved in programming (whether they do it themselves or hire consultants), the using agencies in Massachusetts are given little support or structure for developing programs. Agencies must be given either staff to do programming, or access to central programming resources. Because many agencies are too small to have full time programming experts, it makes sense to have some other source of programming capability. One possibility is a central agency capable of providing programming expertise to those agencies which need it. In order to avoid potential problems created by giving the central agency the power to decide how all planning and programming funds are to be used, funds for programs could be earmarked for specific agencies or for specific projects.

Other states provide central programming expertise. In California, any user agency can "hire" the State Architect's office to prepare, or help the agency prepare, a program by transferring funds from its account to the State Architect's office to pay for the services. The State Architect's office either has one of its staff architects or engineers work on the program, or hires an outside consultant, depending on the nature of the project and the current workload of the State Architect's office.²² Several other states, including Wisconsin and Illinois, also have central agencies which provide programming assistance, sometimes for a "fee," to individual agencies.

It is also possible to provide agencies with programming assistance on a consultant basis, allowing each agency to request that a program consultant be hired whenever they need to develop a new project. Several larger states, including Texas and New York, have such a system. There are problems with such a decentralized approach, however, and one is the problem of selecting programming consultants. The programming decisions are probably the most important ones made in the course of a project; the degree of expertise and ability of the programmer is, therefore, a matter of vital concern. The choice of programmers should be made in a professional manner, and the DSB should choose program consultants for all projects which cannot be programmed in-house by the agency or by a centralized programming agency. Administration of consultants' contracts, and supervision and review of programmers' performance should be the responsibility of a central agency.

Whether programming is done on a centralized or decentralized basis,

in-house or by consultants, funds have to be provided. This should be done both on a project-by-project basis and by establishing general planning and programming funds. For extraordinarily large projects a separate appropriation is clearly warranted. For other projects, especially when speedy project development is required, it makes sense to have a general fund from which monies can be allocated on a case-by-case basis. If a centralized agency has a role in programming, it would also need some funds of its own to maintain its core planning and programming staff. In California, the State Architect's office has such a general fund which consists primarily of unspent planning and programming funds turned over to that office by individual state agencies.

Standards for Programs

In addition to resources for programming, there must be some quality control over programs which are prepared. If agencies use their own staff for programming, there must be assurance that the results will be adequate. Even when consultants are used, agencies may vary widely in their ability to work well with consultants and insure good quality work. Perhaps the most important role for a central agency which assists agencies in programming, prepares some programs itself, or hires and works with consultant programmers, is that of developing and implementing uniform minimum standards for programs, regardless of who prepares them.

The question of whether it is practical to have a centralized agency develop minimum standards or guidelines, when each program must to a certain extent be unique, has been answered in the affirmative. Experts consulted by the Commission felt that guidelines could be developed.²³ Federal agencies such as the GSA, and some state agencies, do require much more detailed standard program information before deciding on a project.

Even if resources for programming are provided and minimum standards for programs developed, there will still be programming problems unless there is some incentive or requirement for agencies to develop adequate programs. If an agency knows that it can submit a project request to the BBC at the last minute and have it included in the Governor's capital outlay request without an adequate program, it will continue to do just that. The only way to prevent this is to require that the central agency charged with reviewing capital outlay requests for the Governor refuse to submit or endorse capital outlay requests that are not based on an acceptable program. The only exceptions to this requirement should be requests for planning or programming appropriation only, not for appropriations for the actual project.

Even such a system would not be foolproof if the legislature continued to entertain capital outlay requests initiated in committee or on the floor of the House or Senate which had not gone through the central agency for review. One state which has done something to deal with this problem is Michigan, where the legislature passes a "planning act" identifying projects by cost and priority, and authorizes programming and planning before it appropriates any funds for actual design or construction of a project. In California, such legislative proposals must be reviewed in detail by the legislative analyst's office which consults with the agencies for which the project is intended. The legislature could follow the Michigan or California examples, or could simply refer requests which are unaccompanied by a program to the appropriate executive agency and request that they be put through the established planning and programming procedures before any subsequent stage of the project may proceed.

SOLUTIONS

In addressing, essentially for the first time in recent Massachusetts history, the problems posed by inadequate programming, the Special Commission has identified and advocated three primary goals:

1. The planning and budgeting process must insure that programs are prepared prior to the start of design, and preferably before the decision is made to approve construction funds.
2. Agencies must be given the capability -- in-house, in a central agency, or through the use of consultants -- to prepare programs which accurately describe the needs of the agency, the scope of the project, and the task of the architect.
3. Continuity and responsibility for decision-making throughout the project, including during program development, must be focused on one individual: the project manager.

In detail, the measures proposed by the Special Commission and passed by the legislature in July of 1980 (Chap. 579) provide for improved programming in the following ways:

Programming in capital planning and budgeting

Each year, public agencies, other than cities and towns, shall submit to the deputy commissioner of capital planning and operations an annual capital facility budget containing their requests for individual project authorizations, which will serve as the basis for the governor's submissions to the legislature for the year's capital outlay bill. The minimum content of such agency submissions²⁴ must be detailed justification and description of the project;

analysis of the investment of work, time and money it will entail; and discussion of the effects of the project on the agency's operating budget (including maintenance costs). Any planning or design documents or summaries must be appended to the project request. These requirements are such that, for many projects, a program will have to be prepared either by or for the agency.

Furthermore, the budget procedure provides that proposals submitted by agencies for the annual capital budget shall be reviewed by the director of the bureau of programming (or the directors of project management or facilities management, when appropriate). The director of programming then shall report to the deputy commissioner of capital planning and operations as to (among other things):

....the technical feasibility, cost and schedule of proposed building projects ...[and] the accuracy and adequacy of any planning and design documents and any other documents prepared in relation to the stated needs...²⁵

It also provides that the governor's capital facility budget shall include, for items requested by state agencies:

...a recommendation as to the need for and where appropriate, a request for, a study and program as a prerequisite to contracting for, performance of, or allotment or expenditure of funds for any design or construction-related activities. If a study or program is not recommended the governor and deputy commissioner shall include the reasons therefor.

The expectation that studies or programs will be prepared for projects prior to their initiations extends to the legislature as well, in that:

Every appropriation or authorization for the design or construction of a building project for which a state agency is the using agency shall be deemed to require the satisfactory completion of a study or program before any services for the design or construction of such project may be contracted for, performed by contract or otherwise, or funds allotted, encumbered or expended therefor, unless such appropriation or authorization specifically states that no such study or program need or shall be done.

Also, no designer selection shall be made and no design services shall be performed unless necessary studies or programs are satisfactorily completed. The using agency and the appropriate people in the division of capital planning and operations shall review and certify, in writing, that such studies or programs are consistent with the current needs and long-term plans of the agency; that they are accurate in terms of the project requirements, budget and schedule; and that the projects can be accomplished within the appropriation or authorization.²⁶

Finally, "No allotment, encumbrance, or expenditure of funds ... shall be approved by the comptroller" for the design or construction of a project, and no contracts for such services shall be entered into by the head of an agency,

unless similar assurance is given that the program is adequate.²⁷

Inasmuch as the past lack of long-range planning has had disastrous effects on the little programming that has been done by the Commonwealth, future programming will also be vastly improved in the context of a comprehensive and coordinated planning program as described in the section on planning and budgeting, above.

An Office of Programming

Within the newly created division of capital planning and operations is the office of programming,²⁸ which has control and supervision over programming and studies for all capital facilities projects under the jurisdiction of the division²⁹. It is expected that the director of programming (appointed by the deputy commissioner, with the prior written approval of the commissioner of administration) shall have extensive experience in the study and programming of buildings.

The major purposes of the office of programming are to ensure that programs, studies and master plans are done as part of the planning process and prior to the appointment of a designer; and to set and maintain standards for the preparation, revision and implementation of such plans. The director and his staff will review studies and programs presented by the using agencies as part of their long-range and annual capital plans and requests (as described above). On request of the agency, the director may also assist them in the preparation of project descriptions and proposals as part of this process. If programs are inadequate, the director may assist the agency in programming, or may assist other consultants hired to do programming. To ensure adequate quality in such programs, the director shall recommend to the deputy commissioner standards and guidelines for their preparation, and assist the deputy commissioner in evaluating the effectiveness of previous programs and studies. Along similar lines, the director may also conduct post-occupancy evaluations on projects of substantial size to determine the appropriateness, utility and quality of programs done and designs prepared from those programs.

Programming consultants

Programmers are placed under the jurisdiction of the Designer Selection Board.³⁰ This is to ensure that outside programming consultants, when used by an agency, demonstrate sufficient competence in this field; and that such work be distributed fairly among qualified contenders rather than being monopolized by a few informally selected firms. Since the Commission has found numerous cases of designers hired to do a preliminary study being given continued services contracts for millions of dollars' worth of work, continued or extended services

contracts are not exempt from the jurisdiction of the DSB.³¹ (For more discussion see the section on designer selection, above.)

Funds for Programming

As part of the capital budgeting process, the agencies may request and the legislature approve money for the programming and planning of specific projects. It is expected that such projects will be rather large and complex. Any programs prepared from such funds must, of course, stay within any limitations (such as of cost) stipulated by the language of the appropriation.

Reserve funds for the purposes of planning and design may be authorized, to be allocated by the deputy commissioner. Programs and plans funded in this way are anticipated to be much smaller than those funded specifically by the legislature, or arising out of an urgent and unforeseen need, for which the delay in seeking funds through the normal procedure would cause a serious loss in the development and use of the proposed facility. Money from these reserve accounts could not be used for projects for which a similar request was being made in the capital budget or had been made in the previous year (and not approved by the legislature). Also, for allocation from the reserve fund to be made, the agency and the director must certify that the proposal fits the current needs and long-range plans of the agency.

Cost Estimating

Past cost estimates have been seriously inadequate for accurate budgeting and design management. While better planning and functional programming will certainly improve preliminary project cost estimates, it is equally necessary that professional cost estimators be employed in the office of programming to prepare cost estimates and to review those submitted by agencies and consultants.

The Role of the Project Manager

Finally, the project manager (whose functions and duties are described in greater detail in the section on construction project management) will perform an essential role in facility programming. Like the staff of the office of programming, the project manager may review and comment on proposals, and, when appropriate, may recommend that a study or program be undertaken. Most importantly, the project manager, as the mediator and manager responsible for the development and progress of every stage of the project, will guarantee that the design produced conforms to the program developed. If this final control is not exerted, designers and agencies will find, as they have found in the past, that the size, cost, and scope of the project may easily be expanded beyond the program approved by the legislature.

DESIGNER SELECTION

The pattern of corruption in the award of state contracts for the design of public buildings is best described by the statement architect Frank R. Masiello attributes to Albert P. ("Toots") Manzi: "Your involvement in obtaining additional work from this administration will be directly in relation to the amount of money you can contribute and the amount of money you raise for fundraising activities whenever I request it of you."¹ The award of public design contracts is a process that lends itself to corruption. Decisions concerning selection of a designer and evaluation of design services involve many intangible factors; the subjective nature of these decisions buffers the decision maker from any rigorously objective standard of accountability. Under the best of circumstances, a positive effort is required to establish standards of accountability and to articulate the criteria by which a third party or the general public could judge the subjective selection process. The political traditions of the Commonwealth have hardly created ideal circumstances. Political support and loyalty in Massachusetts are traditionally rewarded by the dispensation of those government benefits which the politically successful have at their disposal.

In the presence of these conditions, the boom in state construction, beginning in the early 1960's, could only have a catalytic effect. Perhaps not coincidentally, the population in need of services provided by government -- education, housing, incarceration, mental health treatment, hospitalization, among others -- grew substantially at the same time that greater activism in the role of state government in providing such services became politically accepted. The average annual capital outlay for state buildings reached a peak of over \$286 million in 1971, and the per capita debt service reached \$813 million in 1976.

As in previous sections of this chapter, this section begins by describing the procedures formally required by law for selection of designers and certain other consultants. The section then reviews the evidence or empirical data found by the Commission to reflect how designers have actually been selected since 1968. The next part of the section analyzes the evidence and gives the Commission's conclusions, particularly about what parts of this process fail. Finally, this section offers the Commission's recommendations, including a discussion of the role of designers' fees in the selection process.

FORMAL DESIGNER SELECTION PROCESS

After a project was authorized, it proceeded to the next stage which could either be a study or design.

According to G.L.c. 7 s. 30B:

Any project subject to the control and supervision of the director of building construction which is not being undertaken by the operating agency as provided in section [40], shall be referred by the commissioner [of Administration] to the [Designer Selection] board, which shall promptly provide suitable public notice of the proposed project.¹

There was no definition by statute of the kind of public notice required. As a matter of practice the Bureau of Building Construction (BBC) long-range planning section prepared a short description of the designer services required and transmitted this to the Designer Selection Board (DSB). Then:

The DSB prepares a Public Notice listing of projects requiring designers' services and this listing is made available in scattered geographical areas of the State, including the offices of BBC, A&F, and the various professional societies in Massachusetts. The societies are requested to notify their membership of the availability of projects. The Notice contains a blank application form with instructions that the form may be reproduced. Further, each list details the Master File Brochure Data required by DSB.

A Public Notice advertisement (usually 1 column by 2 inches) is placed in at least the two Boston newspapers, a central, western, southern and northern newspaper, plus the Dodge Reports advising designers of the availability of a list as well as establishing an application cut-off date. Copies are also sent to the State House News Service. A copy of Public Notice is also posted on the BBC and the A&F Bulletin Boards and copies sent to the DSB members and the operating agencies for whom projects are contemplated.²

Composition of the Designer Selection Board; Receipt of Applications and Recommendations by the DSB

The Designer Selection Board, located within the Executive Office for Administration and Finance, was according to c. 7, s. 30B, composed of "the director of building construction ex-officio and the five members appointed by the Governor, of whom two shall be registered architects and two shall be registered engineers." The appointed members served overlapping terms of two years.

In addition, that section provided that

The operating agency shall delegate a representative to deliberate and vote with the [DSB] on its recommendations to the commissioner [of Administration] concerning the selection of a designer for the project.

After receipt of the applications, the DSB met to consider the applicants.

The general manner in which the DSB was to make its decisions and recommendations was also described in c. 7 s. 30B. In particular, the board

on the basis of such criteria as it deems appropriate, and after a review of information submitted by all persons applying for appointment and interviews, where appropriate, [is to] recommend to the commissioner [of Administration] at least three designers for each project, stating the reasons therefore, and transmitting to him all material made or received by the board relating to such recommendation.

The recommendation was to be "in writing" and constituted "a public record". It was "advisory to the commissioner". (The requirement for a written recommendation was added by amendment in 1978.)

The statute provided that if the board "deems it appropriate" it could "recommend to the commissioner [of Administration] a design competition to select a project designer." The board was to "establish the scope and rules for such competition". However, there was no provision in the statute as to the circumstances under which the DSB might recommend such a competition.

Selection of the Designer by the Commissioner of Administration

It was the responsibility of the Commissioner of Administration under c. 7 s. 30B, after receiving the DSB recommendations, to appoint the project designer. The DSB was permitted to "recommend" and the commissioner to "appoint more than one designer, if in his opinion such action would benefit the commonwealth." If the Commissioner decided to hold a design competition it had to be done "in accordance with the scope and rules established by the board" and the Commissioner was required to appoint the winner in such a competition. In either event, the Commissioner notified the director of the BBC of the appointment and "the reasons for making the appointment" and then instructed the Director to enter into a contract with the project designer "forthwith," "subject to such conditions as the commissioner" set forth. The requirement for the Commissioner to give his reasons was also added by amendment in 1978.

In 1980, a new procedure, not mandated by statute, was established to supplement the provisions described above. The three finalists submitted by the DSB were required to submit sealed fee bids (as a percentage of the estimated construction cost of the project) to the Commissioner. It was not formerly clear what weight these bids played in the selection of the designer. (See below.)

The only restriction placed on the designers who could be selected was found in c. 7 s. 30B which provided that:

No person shall be appointed unless he is a registered architect or a registered professional engineer.

Non-DSB Designer Selection: Waivers

The above procedures were those applied to BBC projects. However, the jurisdiction of the BBC could be waived. In particular, c. 7 s. 40 provided that

the Commissioner of Administration could "direct that any...project...be undertaken by the operating agency free from the control and supervision" of the BBC. The only requirements for administration of such a project were that:

as far as feasible, the standard contract documents and specifications [used by the BBC] be used in connection with the project; that no person...be engaged as a designer on the project who [does] not have the qualifications required by section thirty B; that the operating agency...file with [the] director certified copies of the working plans and specifications for the project and of all changes therein; that the commissioner may at any time or times add such other conditions to such exemption as in his opinion would benefit the commonwealth; and that the commissioner shall transfer from the bureau of building construction to the operating agency the funds available for the project.

The "qualification" alluded to involved being a professional architect or engineer. Otherwise, the designer selection process was nominally left to the operating agencies when BBC jurisdiction was waived; the Designer Selection Procedures outlined above did not apply.

Non-DSB Designer Selection: - Continued and Extended Services

Two other means by which DSB jurisdiction were avoided were by so-called continued and extended services. In the former case, a designer who originally was selected by the DSB for one phase (say, the study or preliminary plans stage) of project design was engaged by the BBC, with approval by the Commissioner of Administration, to carry out a subsequent project phase of the same project. In the latter, a similar process resulted in the designer performing any or all design services for an entirely different but arguably related project. In both cases, the DSB played no role in approving such continuation or extension of services. Recently the DSB was being informed (but only informed) of the decision.

PATTERNS OF CORRUPTION IN DESIGN CONTRACT AWARDS

Unlike maladministration or poor planning, which reflect the lack of a system or method, corruption often exists in spite of elaborate decision-making procedures and is itself perpetrated in systematic ways that fall into recognizable, repeated patterns. A review of the known instances and allegations of corruption in the award of state building design contracts investigated by the Commission reveals a clear pattern of corruption which, when further analyzed, points to the conditions which make corruption possible. When combined with an analysis of the other failures of the Massachusetts designer selection process, particularly failures leading to poor design quality, an outline of necessary reforms emerges.

The most persistent pattern to emerge from the available evidence is the routine manner in which architects and engineers were required to make

contributions to the election campaign of the governor then in office in order to be awarded a state design contract. The word "contribution" was used to describe what was really a bribe. The relative size of the contributions were reflected in the relative size of the contract and the fees paid. Often the "contributions" were set at a percentage of the fees to be received; a ten percent payoff was not unusual; five percent seemed to be about the "going rate." The same pattern appears for county contracts. The Commission's investigation found in addition that specific payments were solicited for specific projects, either to ensure a contract award to the designer or to affect the scope and funding of the project. These project-specific solicitations may have occurred because of the designer's past lack of involvement with the political arena, because of the special size of the particular project, because the designer adopted a "pay-as-you-go" strategy, or -- it would appear in certain cases -- because of the crudeness of the government officials. This is not to suggest that every designer of a public building won the contract because of political contributions rather than merit. Nor was any evidence presented to show any occurrence of this pattern during the Dukakis administration. Instead, this pattern suggests that the process of designer selection made architects and engineers the target of opportunity for elected officials in need of substantial campaign funds.

The testimony and documentary evidence presented to the Commission include design contracts awarded by the Commonwealth during the Sargent, Volpe, and Peabody administrations, and county and local housing authority contract awards. The details of this record are presented elsewhere in this report. It is worthwhile, however, to review the major points of the record regarding each of these aspects in order to make the patterns visible within the details.

The Sargent Administration

Albert Zabriskie, Deputy Commissioner of Administration and Finance who was nominally responsible for the Bureau of Building Construction and served as a liaison between the A&F Commissioner and the DSB, testified that during the Sargent Administration - after Donald Dwight had ceased to serve as Commissioner of A&F and had become Lieutenant Governor (1971-1974) - Dwight continued to have input into the selection of designers for state building projects.³ Shortly after Dwight took office, Zabriskie testified, Dwight asked Zabriskie to bring him the letters from the DSB to the Commissioner of A&F (Shepard, Yasi, Cowin or Marchand) through which the DSB notified the Commissioner which designers were the finalists for state contracts and from which the Commissioner was to pick the contract winner. Zabriskie affirmed that throughout his tenure Dwight did receive these letters from him and made a

notation -- a dot or check -- next to one of the three finalists named by the DSB. The Commissioners knew that the notations reflected Dwight's choice for the award because Zabriskie told them that was their purpose. It should be recalled that the statute governing designer selection at this time placed the sole responsibility for selection from among the finalists on the A&F Commissioner and makes no mention of the Lieutenant Governor.⁴ The statute did not, however, provide any guidelines or limitations on the criteria or sources to be used by the Commissioner in reaching a decision.

Allegations that notations were made by persons other than the A&F Commissioners prior to their selection of designers were denied by various A&F Commissioners, but were supported or modified only in their details by several other witnesses. Handwriting expert Elizabeth McCarthy testified that she found checkmarks or dots on 117 out of 127 letters of transmittal of finalists named.⁵ In nearly every case, the firm so noted received the contract award.

Testimony corroborating Zabriskie's statements includes that of Victor Zuchero (Sargent fundraiser), Harold Greene (Governor Sargent's patronage secretary), and designers John Carr, R. Scott Quinlan, Abraham Woolf and Edward Healy. According to Zuchero, Harold Greene would occasionally inquire of him whether the principals of firms nominated as finalists had made contributions to the Sargent campaign.⁶ Regardless of past contributions, Zuchero said, the principals of firms named as finalists would be added to the campaign contribution solicitation list. It is significant to note that Zuchero also regarded Greene as an appropriate official with whom to put in a good word for certain designers applying for state projects. The designers Zuchero claims to have thus sponsored were all awarded state building contracts by the Sargent administration.

Green testified that on ten to fifteen occasions Zabriskie brought him copies or originals of DSB finalist-transmittal letters and that he then made dots or other notations on them.⁷ For the purpose of understanding the patterns of corruption of state designer selection, it is less significant whether Dwight or Greene actually made the notations than that they were made by persons other than the A&F Commissioner based on the political contributions of the design firm's principals. The corroborative testimony regarding one particular set of DSB minutes which was introduced into evidence before the Commission (the minutes of the July 26, 1972 DSB meeting) appear most revealing in this light. Harold Greene testified that the notations next to the names of various firms nominated as finalists were made by him. Some of the notations appear not to have been in Greene's handwriting. The notations were the initials

"DD" and the names "Vic" and "Toots". Greene affirmed that the basis on which he made these notations was the campaign contribution of the designer.⁸ The corroborative testimony was given by principals of four firms listed and noted, and in each case the name of the person to whom they expressed a desire for state work (Donald Dwight, Victor Zuchero or Toots Manzi) corresponds to the initial or name noted beside their design firm's name.⁹ In each case, these witnesses had contributed to the Sargent election campaign. In each of these corroborating cases, as in the case of every other firm in this group with a name or initial noted beside it, the firm so indicated received the design contract award from the Commissioner of A&F.

The four A&F Commissioners who served during the Sargent Administration dispute all or parts of this version of events. Charles Shepard testified that there were neither checkmarks nor notations on the DSB letters when he received them from Zabriskie. He stated that Zabriskie never told him about consultations with Donald Dwight.¹⁰ Robert Yasi stated before the Commission that he relied on the advice of Albert Zabriskie in making his selections, and that while he had no explanation for the notations on the DSB letters he would not be surprised to learn that Zabriskie had consulted with Dwight.¹¹ William Cowin testified that he did not recall any notations being present on the DSB letters when he received them.¹² Similarly, David Marchand denied that any notations had been present when he received DSB letters, and stated that he chose designers for public buildings at random unless Albert Zabriskie advised him that a particular firm already was under contract for a great deal of state work. Mr. Marchand did confirm that Victor Zuchero sometimes called him with names of firms.¹³

It is significant to note in light of Mr. Zabriskie's testimony that all four A&F Commissioners during the Sargent Administration relied primarily on Deputy A&F Commissioner Zarbiskie's advice. It is also significant that all four Commissioners agreed that the Designer Selection Board forwarded to them no information about the finalists other than their names. Commissioner Shepard testified that in one typical session with Mr. Zabriskie, fourteen designers were chosen in a maximum of one hour's time.¹⁴ Commissioner Yasi offered his view that Zabriskie was under "tremendous....fantastic pressure" of people calling him regarding designer selection, and that he would not be surprised if such consultations included Lieutenant Governor Donald Dwight and patronage secretary Greene.¹⁵ Both Commissioners Marchand and Cowin testified that they relied completely on the DSB's selection of a finalist as indication that the firm was qualified, to the point that Mr. Marchand could justify random selection and Mr. Cowin stated, "I could not have assessed [the

design firms'] quality and skills regardless of how much information I had".¹⁶ Two particular projects investigated by the Commission shed further light on the procedures and motivations for design awards during the Sargent Administration. These are the Springfield Mental Health Center and the University of Massachusetts Boston Harbor Campus.

William Masiello attributes his firm's award of the Springfield Mental Health Center design contract directly to his promise of \$2,000 in cash contributions to the Sargent/Dwight campaign.¹⁷ The promise was allegedly made in the course of a meeting with Lieutenant Governor Dwight which Masiello had sought through the intervention of Victor Zuchero, and during which Dwight allegedly sought a \$5,000 contribution. In order to have gotten to this point, it was necessary for Mr. Masiello's firm to be among the DSB finalists. Mr. Masiello became a finalist, according to his own account, through lobbying with the representatives to the DSB of the using agency and of the BBC. This choice of points of access may be juxtaposed with former A&F Commissioner Cowin's testimony¹⁸ that during the course of his tenure, he came to understand that in the case of county projects, the DSB routinely included among its finalists the firm favored by the county commissioners, the using agency on county projects.

The investigation into the award of the construction management contract for the UMass campus at Columbia Point has produced a wealth of information concerning the activities of various political figures, the principals of the construction management firm involved, and the attorney and former governor who acted as its business agent. Again, this information is presented in a chronology and narrative elsewhere in this report. For the purpose of understanding a system and pattern larger than any single contract, project, or even gubernatorial administration, it is sufficient to review a few of the sworn statements regarding UMass. It is uncontroverted that the MBM construction management firm found it necessary to employ a former governor to sell its technical services and to act, in his own words as a "lobbyist" ¹⁹, and to be paid based on a percentage of the proceeds of the contract. Former Governor Peabody testified that he was selected for this lobbying role precisely because of the introductions he, as a former governor, could provide the firm, that he used this position to discuss the contract with Deputy Commissioner Zabriskie, and that Zabriskie assured him that there was no need for him to directly contact then A&F Commissioner Dwight to lobby for the contract. Evidence was presented that the MBM firm had some notification of the award being made by Dwight, prior to Dwight making the formal selection. The Commission

heard detailed testimony on numerous methods by which MBM generated substantial amounts of cash and camouflaged political contributions.²⁰ Both Frank Masiello²¹ and William Masiello²² testified about conversations with Albert Manzi: William Masiello described a meeting at the Parker House in Boston at which two principals of the MBM firm were present, during which Manzi complained of the firm's failure to follow through on its commitments to make contributions to the Sargent campaign. William Masiello further testified that one of the firm's principals described to him an explicit arrangement for a five percent kick-back in exchange for the contract. The former state comptroller testified²³ that he periodically provided Manzi (who had no official duties relating to UMass) with running totals of payments to MBM on the UMass Boston contract.

At the very least, the conclusions to be drawn from this testimony are that the firm employed the services of a political lobbyist paid on a contingent fee basis to use his contacts and influence to win the contract, that cash was generated from the firm for political contributions, and that the governor's chief fund raiser took direct interest in the payments to the firm. While other conclusions may be drawn from a law enforcement perspective, these findings alone are sufficient for an analysis of the contract award system.

The Volpe Administration

Three specific examples were developed in the course of the Commission's hearings of design contract awards during the Volpe administration. All fit the same pattern. According to Frank Masiello's testimony²⁴ he was advised in 1965 by Albert Manzi that design awards would be determined by political contributions, he then engaged actively in fundraising for the governor's campaign, and went about obtaining a design contract award by inquiring of Manzi, who took him to see the governor's patronage secretary, who specified a project for which Masiello's firm would be awarded the design contract. The contract was subsequently awarded to that firm. All this took place before the establishment of the Designer Selection Board.

Former A&F Commissioner Anthony DeFalco testified²⁵ that when the Designer Selection Board came into existence, he picked designers on a random basis as a rule, but modified this procedure in favor of firms with which he was familiar. In the case of the Massachusetts Maritime Academy, he stated that he made the award on the basis of the firm's principal being active in Republican Party politics.

Commissioner DeFalco also testified, with regard to the award of the Holyoke Community College design contract to Daniel, Mann, Johnson, Mendenhall, that the designers of this \$9 million facility were chosen at random. As described

elsewhere, Frank Masiello's account of the award of this contract differs markedly from DeFalco's. For this analysis, the essential points of Masiello's narrative²⁶ are the following: that in seeking the contract, Masiello and DMJM officials solicited the support of the highest ranking Bureau of Regional Community Colleges (BRCC, the using agency) staff, of top BBC officials including Walter Poitrost and Frederick Kussman, and of Commissioner DeFalco (it should be recalled that when the DSB had come into operation, the BBC and using agency would cast votes in the DSB selection process); that Holyoke Community College set up its own selection committee headed by Donald Dwight (who was not then a government official); that Masiello believed DMJM sought out an association with him because he was known to be politically well connected; that Masiello expected Albert Manzi to become involved in the selection process, to demand a political contribution, and to make it impossible for any firm to win the award if it did not make a contribution; the Manzi was thoroughly informed through his own sources, of the significant events related to the contract, including that DMJM had solicited support from DeFalco, that they had applied for the contract, that they became DSB semi-finalists, and -- prior to any party receiving formal notification of the award -- that DMJM was told that they had been awarded the contract; that Manzi insisted on a contribution if DMJM was to get the contract; that while Manzi could not control the DSB selection process, he could had would control the actual contract award; that the sum Manzi originally demanded in exchange for the contract was 10 percent of the fee and the sum actually agreed upon was closer to 5 percent of the fee; that Masiello was expected to pay a share of the contribution pro-rated on the basis on the percent his consulting fees (to DMJM) represented of DMJM's total fees; and that Manzi recommended MBM to DMJM for use as consultants on the Holyoke Project.

Peabody Administration

Former Governor Peabody,²⁷ his A&F Commissioner William Waldron²⁸ and Peabody fundraiser Sherwood Tarlow ²⁹ all testified that design contracts were awarded during the Peabody administration as patronage. Tarlow and Waldron met to discuss selections and Waldron usually accepted Tarlow's recommendation. Again, this was during 1963 and 1964, several years before the A&F Commissioner was even limited to choosing from among the DSB finalists. Tarlow identified several firms which benefited from this procedure, and the firm that was the largest contributor -- Desmond & Lord -- received the most contracts during the Peabody administration. Frank Masiello corroborated this procedure³⁰ with regards two contracts he received, and he identified several other design firm principals who made campaign contributions and received state contracts. The procedure was justified by former Commissioner

Waldron in his testimony before the Commissioner when he asked, "If we had a political supporter who was qualified to do the job, why shouldn't he do the job?"³¹

Local Housing Authorities & Department of Community Affairs

The evidence heard by the Commission regarding the selection of designers by the local housing authority in Shrewsbury shows corrupt activities different in form from those activities exhibited regarding state contracts awarded through the Designer Selection Board process. Public housing projects funded by the Commonwealth through the Department of Community Affairs were not within the jurisdiction of the DSB during the period which the Commission studied.

In the example of the Shrewsbury Housing Authority and also the Taunton Housing Authority evidence presented to the Commission showed that the design contract was obtained after payments were made to members of the Local Housing Authority (LHA) board or other persons known to be in contact with board members and in a position to influence the contract award. The payment to board members would be in marked contrast to payments described above at the state level in that the pattern of corruption on state contracts did not involve direct payments to persons officially charged with responsibility for designer selection or contract awards. Another distinguishing feature of Taunton and Shrewsbury cases is that the payments most directly connected to contract awards were not made under the guise of campaign contributions.

The Commission also heard public testimony from Stephen Demos, Chief architect for the Department of Community Affairs,³² that, prior to 1976, a group of twelve design firms held the majority of design contracts that had then been awarded by local housing authorities. The Commission's own review of such contracts for the period between 1971 and 1978 found that eleven firms (of a total eighty-seven that had won any LHA design contracts) held forty-six percent (46%) of the LHA design contracts awarded, representing fifty-two percent (52%) of the total contract values.³³ The group of twelve, mentioned in testimony, was referred to as the "dirty dozen." One particular firm exhibited the repeated pattern of assisting the local community to establish a housing authority as a means of gaining access and favored status for the subsequent award of design contracts by the authority. This firm held a concentration of design contracts in the western part of the state.

WHAT THE EVIDENCE SHOWS: AWARDS INVOLVING THE DSB

An analysis of the award of design contracts should reveal the general strategies of the officials and designers involved and the points of access or "weakness" in the design contract award system. This analysis proceeds on the basis of what individual stated they did and believed, (including both statements made under oath in public and private hearings and the more analytic descriptions of the process offered in interviews and discussion groups), what Commission investigations show to have occurred, and what Commission empirical research on agency operations found. No single source is relied upon exclusively. Of equal importance to this analysis as answering the question of how certain patterns developed is answering why these events took place; if repetition is to be prevented, a mere understanding of the methods that were used will be insufficient. The causes will have to be addressed, lest new methods be discovered. This analysis will examine the evidence for causes of these actions.

The conclusion of the analysis that follows is that the Designer Selection Board is a creative concept and potentially outstanding tool that has been undermined and misused almost since its establishment. The Board is not given the information about applicants or projects which is required to make appropriate selections. It has not had the human resources to correct these gaps in information or to process the information available to it. The Executive Office of Administration and Finance has intentionally minimized the role of the Board by minimizing the information coming out of the Board and by permitting the Board to be by-passed. The evidence suggests that in certain cases the Board may have been abused and caused to function as a laundering process for a political decision. In certain cases it also appears that the internal operations of the Board may have been compromised.

DSB Operations

After the establishment of the Designer Selection Board, in 1967, the strategy adopted by designers seeking state work involved two tiers: first, successful consideration by the DSB, and second, selection by the A&F Commissioner from among the three DSB finalists. The strategy was less complicated before the DSB's operation, and continues to be less complicated in those jurisdictions and on those projects beyond the scope of the DSB.

William Masiello affirmed that during the years 1970 to 1973 alone, he entertained public officials on a least 880 occasions³⁴, in various ways ranging from dining and gifts of liquor, to sporting event tickets to elaborate trips. As Masiello further explained in analyzing for the

Commission the voting procedure used by the DSB, the tremendous value of obtaining two or three "first choice" votes of DSB members made the representatives of the using agency and of the Bureau of Building Construction essential figures in any strategy to become one of the DSB finalists.³⁵ The procedure described by Frank Masiello and used by Daniel, Mann, Johnson & Mendenhal (DMJM) to obtain the Holyoke contract parallels this route. The value of this practice was also explained by former A&F Commissioner Cowin's testimony that as the user agency, the County Commissioners' recommendation for designer was always among the DSB finalists. This phenomenon was noted in 1975 by the Massachusetts State Association of Architects (MSAA) in its "Report on the Designer Selection Board."

Commission research found that it is not simply the voting procedure itself which accounts for the weight accorded the recommendation of one or two of the seven DSB members. The basis for this influence extends into the entire operation, procedure, and composition of the Board.

The DSB does not establish specific criteria for selection of designers for individual projects. Given the absence of a program for almost all projects it is hardly suprising that the DSB cannot be very specific about what it expects from applicants. As a result, selection by the DSB is extremely subjective; there is no guarantee that all DSB members are applying the same criteria for selection on any particular project. The lack of established criteria makes it pointless to have a staff to pre-screen applications. As the result of this situation, legitimate designers have little to guide them in deciding whether or not to apply for a job; many designers feel the DSB selection process is at best arbitrary.

After interviewing past and present members of the DSB, the Commission has concluded that the most frequently used criterion in the selection process is each individual DSB member's personal knowledge and opinion of the applicants. As William Porter, Dean of the MIT School of Design and a former chairman of the DSB put it, the members must rely upon information from "verbal grapevines" regarding applicants.³⁶ A small or new firm, which is unknown to the board members, may have a hard time getting a DSB job. (This was also the opinion of 57 percent of designers responding to the Commission's questionnaire.)

The reliance on subjective evaluation by DSB members, necessitated by the lack of clearly established criteria for each project, is due in large part to the unavailability of necessary program information. Without an adequate program or reliable cost estimate, the DSB is unable to decide exactly what qualifications to look for in a designer. It is difficult, for example, to know

what size design firm is needed when the DSB does not have a realistic estimate of the size of the project. Nor can it decide what specialized skills or experience are called for when the specialized needs of the facility have not been spelled out in a program.

David Carlson, present chairman of the DSB, explained the problem to the Commission:

So, the projects come to us with no professional program established, and the architects don't know what they are offering their services on, and we often find even in the cases where a using agency has the staff to work out the using program, it is not agreed upon between the using agency and the Administration and Finance, Bureau of Building Construction, and it comes to us with those conflicts still going on, and we have had reports of conflicts after the contract has been awarded to the designer and you have got to establish the scope of the project.³⁷

In addition to a lack of necessary information about the project, the DSB lacks relevant information about the applicants. Although almost all members of the DSB and approximately three quarters of all designers answering the Commission's questionnaire felt that former clients of applicants should be contacted to see how the applicant performed on prior jobs, this is not done. Neither is there any formal evaluation of past performance on BBC projects nor on other state jobs. As a result, even if the DSB wanted to set up formal criteria for each job, it would not have the necessary information to apply them.

This lack of information can be traced, at least in part, to a lack of DSB staff to collect and verify information.

The 1975 report on the DSB by the MSAA states that generally the DSB reviews approximately 70 applications - which its members see for the first time at the meeting--and that it eliminates 75 percent of them in about 20 minutes. The remaining 15 or so applicants are then discussed and the list reduced to the three finalists, within a relatively short time. Usually the whole selection process for five to ten projects is accomplished in one three to four hour meeting. Occasionally consideration of semi-finalists for a large project is postponed to allow interviews with the semi-finalists. The Commission's investigation and hearings confirmed these findings. With so short a time devoted to each application, and in the absence of advance information to the DSB members about either the applicants or the details of the project, it is hard to believe that every firm applying for a job gets careful consideration under this system. There is not time to rate each firm on the basis of established criteria, even if such specific criteria were used for each project.

Neither cynicism nor hindsight are necessary to question the reason for the absence of a budget for staff. It is now apparent that no part-time volunteer board could conceivably collect and use the appropriate information about

applicants. Regardless of the reason, however, the effects of this failure are clear. The DSB has not had any staff of its own, other than a secretary and an administrative assistant on loan from the BBC, with which to administer files, to check references given by applicants, to inquire of their performance on prior projects, to verify information in their applications, to develop and propose specific criteria for individual projects, or to pre-screen applicants on the basis of a scoring system. Given the DSB members' lack of time and the lack of support staff to collect information and analyze the applications, it is hardly surprising that the primary factor in selection is any DSB member's personal knowledge of the applicants.

The following quotation from the 1975 M.S.A.A Reports³⁸(p.10) aids in the understanding of the DSB procedure from the profession's viewpoint.

No records are kept regarding criteria and their application or reasons for elimination, whether objective or subjective. At best, the initial phases of the elimination process are superficial, lacking an objective methodology which might survive public scrutiny.

General criteria have been published by the Board in a number of its Annual Reports; the Committee knows of no instance where criteria have ever been made specific to projects when they were advertised, nor has any record of consistent application of criteria come into view. Thus, such criteria as are applied in the review of applicants are generally unknown to the profession at large and oriented to the reduction of a given list of applicants for a given project on a given agenda for a given meeting. An example from the regular meeting of 15 April was explored in this regard; it was clear that the Board had rapidly achieved a consensus that a firm of more than one principal (continuity), with from 9 to 15 staff (size), and located in Norfolk County (proximity), should be sought. This enabled a rapid reduction of the list to manageable proportions, and undoubtedly facilitated the deliberation. Quite apart from the waste of time and effort on the part of professionals who were clearly ineligible on this basis, the absence of attention to technical competence or creative ability is again apparent; these questions might arise only after some 80 percent of the available applicants had been eliminated. The almost complete reliance on simple, quantitative measures for the bulk of applicants may be convenient from certain points of view; it hardly merits the time of persons who should be otherwise qualified to make judgments in the selection of professionals to serve the Commonwealth and flatly contradicts the repeated assertions of the present board that organization and screening of applicants by qualified staff would subvert the Board's professional judgment.

The DSB apparently relies on the aggregate experience and scuttlebutt of its members relating to an applicant's capacities. Yet none of the DSB members could have such broad experience or knowledge of professional reputations as would enable that member to make reliable judgments on that basis alone. The emergence of new firms and the reorganization of existing firms is endemic in the design professions, and clearly requires a more sensitive mechanism.

No organized method of review of performance by designers previously selected exists, other than the possible awareness of the Agency and/or BBC representatives.

The relative weight accorded the opinions of these two representatives is therefore hardly surprising.

The effect of the lack of such criteria and information is apparent even

aside from evidence that political and personal considerations have taken their place. Designers are sometimes selected who are not well qualified for the particular job for which they are chosen or, for that matter, for any state project. For example, in the late 1960's, the DSB selected as a finalist for a very large new project a designer who had previously been awarded two other large BBC jobs. One of the two previous jobs had already been in progress for ten years, the facility was not yet fully occupied, and the project was the subject of litigation. The second job, still a year from completion, was already over 2 3/4 years behind schedule in the construction phase alone. The BBC attributed nearly one year of that delay to the designer. Objective criteria, including past performance and the amount of other pending work, would probably have excluded this designer from consideration. Nevertheless, the designer was chosen as a finalist and awarded the new contract, which was abandoned by the BBC after much delay and expense, ten years later. Many other examples exist of the DSB selecting designers over the years when their former BBC projects had resulted in delays, poor design, and litigation. The State Auditor's Report on the BBC for fiscal 1977 noted that the DSB had recommended among its finalists three firms with 81 design disputes then pending on BBC projects.

By-Pass of DSB

These inherent shortcomings of Designer Selection Board procedures reduced the effectiveness of the Board severely in achieving the goal of competitive merit selection. Nevertheless, the very existence of the Board as an added tier through which designers had to pass in order to obtain state contracts can be seen to have had some effect. A review of all public design contracts held by the Masiello firm (in its various incarnations) through 1977 shows (see accompanying chart) that after establishment of the DSB, the firm relied primarily on awards that did not involve the DSB. The procedures that allowed this firm and others to receive state contracts without any DSB review deserve the further examination below.

MASIELLO & ASSOCIATES' STATE AND COUNTY CONTRACTS

Agency	1958	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77
ory Commission	•	•	.	.	.	•	.	.	.	Area of DSB Jurisdiction	.	.	.	.	.	.	.	.	.	.
ate Colleges	.	•	•	•	.	•	.	.	•	
olic Health	.	•	•	•	
tal Health	•	•	.	•	•	•	•	•	.		•	•	.	.	.
ath Services	.	.	•
rection	.	.	•	•	•	.	•
orcester County	•	•	.	•	.	•
tinued ervices Contracts	•	.	•	.	•	•	.	•	•	•	•	.	•	•
folk County	•	.	•	.	•	.	•	.
al Housing uthority	.	•	.	.	.	•	.	•	.	.	.	•	.	•	•	•	.	•	•	•
ropolitan istrict Commission	•	.	•	.
BBC uthority Waived	•	•	.	.	.	•	•	.	.	.

• Non DSB Contract
○ DSB Contract

Source: Masiello & Agency Files.

The specific information on the distribution of awards to the Masiello firm and the Commission's examination of state design award procedures generally has shown two primary methods to eliminate DSB review and indeed any competitive procedure for designer selection. The most frequently employed device is approval of a "continued" or "extended" services contract for a designer already under contract for a BBC project. This procedure requires the recommendation of the BBC Director and approval of the A&F Commissioner. The second most frequently employed device is a waiver of BBC jurisdiction over a particular project. Again, the BBC Director recommends, typically at the request of the using agency, and the A&F Commissioner approves. In neither case does the DSB judge the appropriateness of the procedure as applied to the particular project, nor is there any competition for the contract award. In the case of BBC waivers, the DSB is not even informed of the procedure's occurrence.

Continued or extended services are, in a sense, contract amendments appropriate for relatively minor changes in the scope or timetable of a project. Reasonable people might differ on the exact point at which such a change becomes a new project but this procedure has been used in the Commonwealth to authorize contracts for what few would disagree are entirely new projects.

There are numerous examples of this problems over the past ten years. At MCI Concord, the Masiello firm was hired to do a master plan in 1961. The BBC then awarded every design contract for every project at that facility to the firm up until 1978 on a continued basis. Even buildings not contemplated in the original master plan, and not within the facility walls, were awarded to the designer in this manner. Ironically, the firm was awarded and paid on several contracts to renovate its own buildings, which needed repairs because of original design errors.

In another case, the state hired a designer to do a feasibility study for replacement of an old county facility. The designer then subcontracted the study out to another firm. The project did not move beyond the study stage. Ten years later a fire partially destroyed the old facility. The original designer was then hired, on a continued service basis, to renovate the facility. The project was not advertised, nor were any other designers considered.

Other instances of the abuse of continued and extended services were brought to the attention of the Commission. A designer who had designed one facility was awarded a contract for a completely different facility in another town as a continued services contract, on the theory that the two facilities were similar in purpose and therefore could use similar design. Other cases were found where a designer did an initial study or master plan for a multi-building project, and was then awarded the design contract for all the individual buildings in the

project as continued services.

The waiver of BBC jurisdiction over a project is typically justified in user agency requests as a procedure to save time generally, to spare the BBC staff from a relatively small project, or to allow the user agency's allegedly more specialized engineering staff to directly supervise the project. The effect of the waiver is also to waive DSB selection procedures. In the Department of Mental Health this appears to have happened with great frequency. That agency has hired designers with which it already had a longstanding relationship, instead of offering other interested and capable designers the opportunity to work with the agency. An agency might also avoid the DSB by obtaining a BBC waiver to use its own in-house design staff. Whether the waiver involves the use of the agency's in-house project supervision staff only, or both in-house project supervision and design staff, a problem may still exist. The BBC does not usually conduct a review of an agency's request for a waiver adequate to determine whether the agency has the capability to handle the project on its own. For example, according to Joan Belle-Isle, former planning director for the Department of Corrections, at least one inappropriate waiver was granted to her department in 1974. The project "just took forever to design because we really bit off more than we could chew." The project was not ready to go out to bid for construction until the fall of 1979.³⁹

Benign intentions cannot be assumed in every case of in-house design in light of the extensive evidence of corruption and kickbacks between outside designers and contractors and suppliers.

Political control of the methods to bypass the DSB lies with the Commissioner of A&F. The availability of these avenues meant that designers already inside the system could be pressured to continue their political contributions or bribes in exchange for elimination of the risk and bother involved in participating in another round of DSB competition. Failure to make the demanded contribution would result in a decision to "throw it [the contract] back into the Designer Selection Board".⁴⁰ It was the testimony of William Masiello in regard to the Holyoke Community College Phase II contract that Albert Manzi influenced whether the contract was awarded through the DSB or on a continued services basis.

A&F Design Contract Awards

The bulk of evidence presented during the Commission's hearings on designer selection concerned itself with the process whereby the Commissioner of A&F selected from among three or more finalists recommended by the DSB. The crucial issue regarding this part of the process is the criteria used by the Commissioner of A&F in choosing the contract winner. The legislation creating the DSB and mandating the two-tiered nomination/selection process gives no clue of what the

basis of the Commissioner's decision is expected to be. Commission research found neither DSB members nor A&F officials able to articulate any criterion to be applied by the Commissioner other than a vague sense that he may have knowledge or access to information that the DSB did not possess. The only sort of information any source could specify in this category was whether the designer was involved in litigation with the Commonwealth or otherwise under investigation by the criminal division of the Attorney General's office. The nature of the Commissioner's office, the demands on that office, and the already noted paucity of time devoted to the selection process all suggest that the Commissioner would rely heavily on the opinion of the DSB in judging designers. As previously noted, however, the Board communicated nothing to the Commission in this regard other than the name of the finalist and their address. As stated in the 1975 M.S.A.A. Report:41

Over the years, recommendations from the DSB have gone to the Secretary of A&F in two ways. Under Commissioner's McCarthy and DiFalco [sic] nominees were ranked in order of preference; the DSB balloting was attached. Otherwise, nominees have been ordered alphabetically, and no record of DSB votes has been sent up to the Secretary. The early experience of ranking produced, according to the Chairman, criticism of the DSB and was, therefore, abandoned.

It is of interest to note that Commissioner DeFalco initiated the procedure of DSB finalists' names being forwarded in alphabetic order, rather than with DSB preferences.⁴² It is difficult to discern what benefit the Commissioner hoped to achieve by this change, or what basis exists for the idea that three or more firms of equal quality could be found for every state building project. To find flaw in this procedure, it is not necessary to reach the harsh conclusion that any administration intentionally sought to eliminate any basis of accountability for its award of design contracts or to give itself a free hand in developing some basis other than merit on which to select from among the three finalists. At a minimum, the shortcoming of this system is as stated in 1975 by the M.S.A.A:

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"The [M.S.A.A.] Committee believes that the two stage nomination/selection process, involving DSB and A&F, contains certain inherent hazards. The Committee was struck by a view at the DSB level that, as A&F was required to make the final choice, DSB was absolved of ultimate responsibility for designer selection; while A&F, in making its choice, took comfort from the fact that all the names before it had been carefully screened by DSB, and it would, therefore, avoid criticism as long as it chose from the three."

The limits and hazards of blocking all information from flowing between the two tiers of this process are increased by the absence of a statutory requirement or institutional practice which would have created a flow of information out from the Commissioner's office. The only record known to exist of why the various A&F Commissioners selected the finalists which they did, in fact select is the record created by the Special Commission's investigation and the inquiry of the

Legislative Post Audit MBM Sub-Committee. The A&F Commissioners' own accounts range from having no recollection of any reason for making the selections they did to having relied on the somewhat random selection methods of taking the DSB's alphabetically arranged list and serially choosing the first, second, or third name listed in a repeating pattern. This system speaks very poorly of either the A&F Commissioners' ability as managers or of the relative importance they placed on the quality of design of public buildings. It stretches credibility to believe that if this were the system preferred by A&F Commissioners that some less random criterion would not soon come into play. To say the least, this procedure places a Commissioner of A&F in a vulnerable position. Faced with pressure from any source of any degree regarding a design award, the Commissioner is not provided even the slender defense to such pressure of having to record his or her reasons for the choice made. The mere fact of selection of a designer as a finalist by the DSB is enough to hide behind when no reason need be given for the Commissioner's choice of one of those finalists.

The whole process is well characterized by a parenthetical comment reported in an unrelated Boston Globe Magazine article⁴⁴ about a prominent elected official, who states, "You tell them, 'I want something built there. I want it to be important, Significant. I want you to provide this and this, but I don't have any heavy specifications. Let's see what you come up with.'" The writer notes, ". . . he knows that it makes his final choice more subjective. If there are no specifications, then there are none to meet, none to be checked against, none, indeed, to be held to."

Housing Authority Projects:

The investigations and research by the Commission of the design award process used by the DCA and local housing authorities presents an organizational situation that has changed remarkably during the period under study. It is essential to recall that in the mid-1970's the Department underwent major procedural reforms directed at the designer selection process. The highpoint of these changes was the attempt to use design competitions to generate a list of designers qualified to design public housing in the Commonwealth. According to the testimony of Steven Demos, chief architect for the Department, at a Commission hearing on Oct. 10, 1979 the intent of the competitions was to identify a large number of designers who were competent in the design of housing for the elderly and interested in design contracts with local housing authorities. A list was developed as a result of one of the design competitions sponsored by the department. However, legal action, brought on behalf of a number of the architectural firms that had enjoyed a large number of local

housing authority contracts prior to the design competitions, lead to the department abandoning the use of a "qualified" designers list. At approximately the same time, the Department promulgated a rule forbidding any local housing authority from awarding a design contract to any design firm that had two projects under development in any current cycle. The intent of this rule was to break up the concentration of design contracts in the hands of the twelve designers (mentioned above) who dominated local housing authority work in Massachusetts. In 1978, the DCA published a booklet entitled, "Developing Housing for Older People" and a set of program descriptions for housing for the elderly. The "Developing Housing" booklet includes architect selection guidelines which recommend a series of questions every local housing authority should seek to answer regarding each design firm applying for a design contract. Implicit in these questions - and occasionally explicit - are a series of criteria for designer selection. Formal guidelines did not exist prior to this publication.

Substantial advances have thus been made by the DCA in offering guidelines and information to those local housing authorities seeking to improve their own designer selection procedures. Despite these advances, the statutory and regulatory framework in Massachusetts for designer selection by state and local public housing agencies remains a system potentially subject to abuse, difficult to control, and not easily susceptible to public scrutiny. This results from a highly decentralized system of authority and responsibility, the absence of mandatory procedural safeguards, and the absence of effective record keeping mechanisms. In analyzing this system, is it necessary to examine the local housing authority, the DCA, and the relationship between the two.

Local housing authorities are composed of lay people. The elected and appointed members typically have no experience in the selection of an architect or engineer. The lack of expertise of board members is severely compounded by the absence of staff qualified to engage in a successful designer selection procedure. Most housing authorities have little staff of their own; the typical staff consists of a maintenance person, or perhaps an executive director who functions as manager of the housing projects in addition to a small maintenance crew. The lack of staff in this case is even more harmful than the absence of staff for the DSB because of the composition of the local housing authority boards. Even when armed with guidelines or instructions, or a set of questions, the board is rarely in a position to effectively investigate the background and past projects of all applicants, or to necessarily be in a good position to evaluate the information that is presented to them by applicants. A local board would not necessarily know of a bad experience another housing authority may have

had with a designer under consideration for a contract.

Faced with an unscrupulous design firm and collusion between the designer and a board member, those board members who would prefer to see selection of a designer based on merit are in a weak position to balance the presentation of one designer and the advocacy by a board member for that designer. Although useful information may be lacking, Authority board members are nonetheless subject to the salesmanship of design firms. As the DCA "Developing Housing" booklet states, "some firms send public relations experts to interview with LHA's." This appears to be an understatement.

The guidelines presented by the DCA to the local housing authority outlined three requirements: they must send the Department a "short list" of approximately 15 designers being considered during the first round of screening of applicants; they must do likewise with approximately six names being considered during the semi-final round of screening; and the local authority must advise DCA of the name of the firm they have selected. Despite these requirements, the selection procedure actually used, and the ultimate choice of designer, still remain almost exclusively in the hands of the local board. The board does have to produce some documentation to indicate some compliance with the guidelines, but the guidelines are not regulations and have not been enforced as such. Similarly the review by DCA of the "short list" and of the selected designer is not, technically, an approval or veto process. Testimony⁴⁵ before the Commission limited the role of this review to an opportunity for the Department to make suggestions or recommendations to the housing authority. The selection process remains a one tier process, unlike the procedure for state agencies required to use the DSB. The evidence before the Commission suggests that the lack of required procedures, the lack of information and the lack of professional expertise by the selection board - in this case the housing authority board - all make the buying of a design contract through influencing from one to three board members entirely possible.

The evidence presented to the Commission regarding the minutes of board meetings shows inadequate record keeping. Those are important for the purposes of determining whether guidelines were adhered to, whether votes were taken and exactly what procedures were used in the designer selection process by the local housing authority.

The DCA does not and cannot make up for these shortcomings on the part of local housing authorities. The Department does not have statutory responsibility regarding the selection of designers by local housing authorities. As stated by Stephen Demos before the Commission in a hearing on October 10, 1979,^{46p. 27,}

I think generally what we have said is checking the credentials of the architect is the housing authority's responsibility. We will pass over to them as much information as we can. We will make their decision process as easy as possible. We will give them guidelines.

Although it would appear that the Department has authority (under the decision in Commissioner of Department of Community Affairs vs. Medford Housing Authority⁴⁷) to issue regulations binding on local housing authorities; it has not done so. Any attempt to do so might require further clarification by the court of the Department's authority. The Department's intervention is limited to three points: first, explaining the guidelines they have promulgated; second, advising LHA's regarding the short list of approximately 15 architects, based on any information the department may have regarding those architects; and third, reviewing their final selection. The review of the local housing authority's selection is limited to four criteria. Those criteria are that the firm is licensed to do business in Massachusetts, that they have an operating office in Massachusetts, that they are not being sued at that time by another housing authority, and finally that they do not have two other projects in development in that funding cycle. In the words of Stephen Demos, "if they don't fall into those four categorical ways, we have to approve them even though we may be wishing we didn't." The DCA therefore does not operate as a second tier in the designer selection process, neither in a way parallel to the Commission of Administration and Finance in making the final selection nor in a manner parallel to the DSB of receiving applications and performing the initial screening of applicants for subsequent selection by the local housing authority.

Even the limited role played by the DCA is further hampered by a lack of information on the part of the Department. As stated by Mr. Demos in his testimony:⁴⁸

MR. FORBES: Do you maintain a performance record of architectural firms which have worked for you in the past?

THE WITNESS: We do not; there is no formal performance evaluation of the architects.

MS. BURKE: Does the local housing authority have the staff to make that prejudgment?

THE WITNESS: Probably not. To get right down to it, a small authority that has only one project has only a secretary working that is working only half time or a maintenance man working half time. They probably do not have the expertise....We do work with them... Generally, though, it falls on the voluntary people that are the authority board members to check through this. If they have an executive director, they can help alot.

The most well-intentioned housing authority board would, therefore, not be able to use the DCA to perform designer selection for it. Evidently the necessary information and evaluations do not exist anywhere.

It is unfortunately the case that even the reforms instituted in 1977 do not necessarily prevent collusion between a designer and a member of a local housing authority board. Certainly the rule limiting designers to two projects has been an important step in distributing public housing design work. The efforts and courage of those who instituted that rule stand as an example of effective administrative change and they are to be commended for their work. Nevertheless, the rule must not be regarded as a cure for either the problem of corruption or the difficulty of insuring a selection system based on merit. The shortcoming of the criterion limiting designers to two projects is illustrated by the testimony of William Masiello before the Commission:49

...I was at a NAHRO convention, (National Association Housing Redevelopment Organization) [sic], and the conference was being held at the Wentworth-By-The-Sea in Portsmouth, New Hampshire. At about the same time we, the architects, were finding it very difficult to get contracts from DCA. And many of the architectural firms that were in business for years were receiving them in large quantities. I was confronted by a member of the DCA, and he asked me, he said, "How do you stop one architect from getting 10, 15, 20 contracts? I thought about it and I decided a great way. I said, "Why don't you limit two contracts to one architect. He thought about it. He said "Yes, do you think it will work? I said, "Just a minute. Why don't you limit it to contracts in design only. If they carried it through, I had two contracts under construction and they would have automatically eliminated me because I was working on the Yorkford Housing project and the Pembroke Housing project which I was sure I was going to receive. So they in turn did in fact make that part of the criterion.

So, in doing so, the architect of record, Oxford, who I was trying to knock off, automatically disqualified him from that project and that is how I was able to obtain the Oxford Housing project and keep my two contracts that were under construction.

These remarks indicate that the rule only serves to limit the number of housing authorities that any one firm may seek business from at any one time. It does not change the way any firm goes about seeking business.

Another characteristic of the DCA/local housing authority designer selection system is also illustrated by Mr. Masiello's testimony regarding this same regulation. Mr. Masiello went on to testify,

"...I received a phone call from DCA and he informed me that Senator Kelly had called over and says that the Oxford Housing Authority were desirous of using another firm other than Masiello & Associates. Well, naturally, being close to Senator Kelly, I called him and I said, "Jim, I said, I am in line for this contract. He said that the architect who came in that originally had the contract said that you were complaining about, you were also complaining about the two design contracts that DCA put on the criterion. I said Jim, I will be very happy to get to him and to offer him one of the two I am going after. What if you get three? If we get three, we will change the rules. So, anyway, as a matter of record, Senator Kelly backed off and left the two design system in."

These remarks indicate the vulnerability of the administrative reforms instituted by the Department. Fortunately, in this case and to date, the Department has been able to maintain this rule. It is in the nature of administrative regulations, however, that they are readily changed by new administrators.

THE QUALITY/CORRUPTION CONNECTION

It is important to understand how the Commonwealth's selection process fails as a merit selection process but a discussion of a better system should not proceed without first clarification of the larger flaw of the procedure, beyond its failure to meet the ostensible goal of merit selection. A process based on political contributions and bribery is none the less a process, and it apparently served the Commonwealth for over a decade, if not considerably longer. Buildings were built and are standing, and if many are defective it is arguably more a problem of design review or supervision than of how the designers were selected. It is worthwhile to understand whether the Commission's inquiry produced any connection between the designer selection system it found and the quality of building design and construction in Massachusetts. Regardless of any higher view of patronage as a political or social engine that powers our public life, the testimony before the Commission is that for the business people involved, it is a purely commercial matter that quickly converts patronage and political contributions into buying contracts with bribes. If political contributions or bribery or "simple favoritism" are the determining factor of a firm's success in obtaining state contracts, then members of that firm and all other firms know that they need not perform well on currently held contracts to obtain future contract.

The implication of corruption on the quality of design and construction is clear and extensive. A recurrent theme in the Commission's findings and in this report is that the method by which the Commonwealth selects a firm to provide services will have overwhelming effects on the quality of services that the firm provides. A selection system in which quality of past service is not the paramount criterion will not produce good service in the future. The selection system is a powerful statement to all concerned whether the Commonwealth regards the quality of a firm's work as an important element in its performance of services

The general public's distaste for bribery may be balanced by an acceptance in many quarters of patronage as a procedure in state business. The defense of patronage is that it reflects reality and enhances our political leaders' ability to lead and govern. Proponents assert that it is only reasonable to differentiate among qualified applicants for a state job or contract who supported an elected official and his or her policies and those applicants who did not. It is theorized that a supporting, loyal team is desirable in every aspect of government services and programs over a system whereby disinterested persons serve continually regardless of the person or party in power.

There is much to be said in rebuttal to this view aside from the effects on

the quality of services rendered, in this case architectural and engineering services. It limits competition to those who can or will contribute or bribe, and denies access to government contracting to those who cannot or will not. It supports some political candidates, particularly incumbents, at the public expense; the candidates are gaining the support of the few in exchange for contracts paid for by the many, the citizens of the Commonwealth. The unfairness affects not only politicians, but extends to distort the entire political and electoral process when certain candidates can cash in or gain support based on distributing government contracts that are not within the power of other candidates to distribute. The public's choice is limited by the imbalance in access to campaign funds based on a closed distribution system of the public's money. Additionally, it must cost the public something if in addition to the expenses and profit usually associated with building design, the system must also produce a substantial amount of bribes and campaign funds, evidently from five percent to ten percent of the cost of design services.

The expense of bribery and political contributions cannot be viewed as being limited to designers' fees and contained totally within the design appropriation in the capital outlay budget. The evidence before the Commission regarding designers' consultants, falsified time sheets, bid rigging, specification rigging, materials substitutions, and change orders all shows that designers forced to carry a large overhead in political costs will recoup those costs during the life of a project. This chain of kickbacks cannot occur without a reduction in time and materials appropriated to public projects.

It is only logical that an entrepreneur like William Masiello who had the objective of maximizing returns would conclude as he did that paying up for contracts not yet received would result in being "burned," when the contract never materializing.⁵⁰ After participating in general fundraising on the promise of future state design contracts and finding those contracts not forthcoming to a satisfactory degree, Masiello concluded -- and advised others -- that it is more prudent to contribute only a small down payment if at all in advance of the contract award, and to then contribute in installments pro-rated on the basis of actual payments received from the state. General patronage based on general contributions does not make as much business sense as bringing to purchase specific contracts, and thus the former quickly becomes the latter.

AN IMPROVED DESIGNER SELECTION PROCESS

Structuring an effective designer selection procedure requires a "top-down" approach, beginning with the goals the procedure should achieve or the values it should maximize and proceeding to describe a process from its conclusion to its beginning. The advantage of starting at the conclusion is that it will enable a

clear view of what information must exist and what procedures should already have been gone through when the final decision is to be made if that decision is to conform to the stated goals and maximize the values that are agreed upon. It then remains to structure the early steps of the process to properly make available whatever is essential for the final decision. In other words, the early steps in the designer selection process should be structured to serve the final selection decision, rather than allowing the final decision to be structured and limited by some early steps in the process that happen to be in place.

The Commission proposes that the goal should be to obtain the best possible design services available within a given fee limit, and to do so in a way that leaves participants in the process accountable for the part they played. The process must place ultimate responsibility for the final selection in one, focused place (preferably with one individual, ultimately), and allow third parties to understand the particulars of any one selection decision after the decision has been made. Despite actions taken in the past which mitigated against achieving some of these goals, few public officials today would openly disagree with most of what has been stated above.

Strong disagreement exists, however, about the first portion of the stated objective, namely maximizing professional merit within a given fee limit. Disagreement comes from two sources and the alternatives proposed would have significant effects on the procedures to be structured. It is worthwhile to examine the disagreement on goals before describing the recommended process

Widening Distribution

One source of disagreement advances the alternative goal that selection should distribute contracts widely among the profession but with preference for designers based in Massachusetts or even in the locality in which the project is to be built. This view holds that there is some essential unfairness in any one firm garnering the lion's share of public contracts of any sort. It is further contended that the very possibility that a firm can be favored for reasons of merit make it harder to discover when a firm is favored for other reasons, such as political influence, and tends to legitimize a concentration of awards to a few firms. A strict rule limiting the number of contracts one firm can hold would eliminate the possibility of any firm being favored for political reasons. Such is the procedure used by the Department of Community Affairs in regulating designer selection by local housing authorities as noted above, and which was instituted to break up the group of politically influential designers who had dominated public housing design work in the past.

The Commission rejects this view as a general principle applied to designer selection. It is at once too broad and too narrow. If the economic policy of

the Commonwealth is to favor firms based in Massachusetts, then that policy should be explicitly applied to all state purchasing of goods and services. (We note that it is difficult to apply to a subjective selection process unless explicit criteria and a scoring system are employed.) If there is something in the nature of any particular project that requires that the design firm be located near the project site or near the central office of the using agency, or have extensive experience in a specialized field of design, then that factor should be made an explicit public criterion in the judgment of professional merit of the firm to be selected. The Commission further sees nothing in the nature of public contracts (not grants) that compels that wide distribution of such contracts is an essential "fairness" to be afforded the citizenry. Contracts are awarded for services to be rendered, based on performance, not as entitlement. Concentration of awards in the hands of a few firms is inexcusable when the quality of service performed is inferior, as has been the experience of the Commonwealth with regard to construction subcontractors in certain trade specialties. Meritorious performance should be an advantage in seeking public contracts, not a bar. We do agree that the DCA "Rule of Two" serves a valuable purpose in a system as decentralized and nonprofessional as the network of local housing authorities and favor its continuation in that context.

Fee Bidding

The second source of disagreement with the goal stated above advances the notion that it is insufficient to maximize professional merit within a fee limit. This view holds that fees should be made as low as possible through the use of fee bids.

The Commission rejects fee minimization as a goal of the designer selection process as counter-productive to cost reduction, as a factor which inevitably diminishes the value of professional merit, and as a precursor of procedures which can do as much to hide as they can to reveal the workings of the designer selection process. The Commission strongly endorses cost reduction as a goal of designer selection and believes that selection based on professional merit within a fee ceiling or range of fee limits is the best way to realize significant reductions in the total cost of constructing, maintaining and operating any building.

In reaching this conclusion, the Commission relies heavily upon the extensive study and thought devoted to this question over the past thirteen years by various agencies of the federal government, the Congress of the United States, and the American Bar Association, in addition to the information and statements produced by our own research and hearings. A complete reading of all these sources is essential to a thorough understanding of this issue; the analysis

herein must not serve as a substitute for that review. The benefit of these past studies is to articulate the major supporting arguments for and indeed the nature of the alternative available methods of designer selection.

The debate about price competition in designer selection is the most heated question facing procurement specialists and design professionals today. The proper role of fee in designer selection is a sufficiently vexing question that discussing it in the abstract is unproductive. It is only by defining a set of practical alternatives that the benefits and shortcomings of each approach become apparent.

Fees: - the Alternative Views

In the existing literature, three alternative models for the role of fees in designer selection are presented. For this analysis, they are termed "Competitive Selection", "Competitive Negotiation", and "Restricted Bidding." The 1974 Report of the General Services Administration Special Study Committee on the Selection of Architects and Engineers Subcommittee Five on the Feasibility of Competitive Bidding Applied to A-E Procurement (hereafter, the "GSA Report") defines competitive selection as follows:⁵¹

The awarding authority conducts discussion with three or more competing firms to evaluate each firm's qualifications and past performance as well as anticipated concepts and the relative merits of alternative approaches to the project. The awarding authority then selects one firm as best qualified and negotiates a fee based on a detailed analysis of the value of services to be rendered. It is important to note that price of services is not discussed before selecting the A-E deemed best qualified; price is discussed before award of contract.

The traditional federal procedure applying this method outlined in the American Bar Association Model Procurement Code Report by the Subcommittee on Architect-Engineer Contracts (hereafter, the "ABA Report") includes these steps:⁵²

- . "public announcement of prospective opportunities inviting all interested professionals to apply;
- . submission of professional qualifications by interested firms;
- . discussions with three or more firms regarding their approach to the project;
- . selection, in order of preference, of no less than three firms deemed to be most highly qualified; and
- . negotiation with the highest ranked firm to arrive at a contract price the agency head determines to be fair and reasonable to the government. If an agreement cannot be reached with this firm, negotiations are terminated. Thereafter, negotiations are begun with the second ranked firm and so on until a contract is consummated."

As the GSA Reports notes⁵³, "price is one of the factors in awarding an A-E contract" but the client will only "engage in serious price discussions after

selecting the firm most qualified to perform the particular project." The GSA Report supports this method, as does the ABA Model Code, the Study Group 13-B of the Commission on Government Procurement (but not the Report of the entire Commission), the Congress of the United States. Practice is employed by the GSA, the Defense Department, most states -- with the exceptions of Maryland, Massachusetts, and possibly Kansas -- and, according to the ABA Report⁵⁴ "Federal and state authorities are in near unanimous agreement that fee competition should occur only between the selected A/E and the government client." (Emphasis added.)

The alternative most frequently proposed to replace competitive selection is termed "competitive negotiation", which is defined by the GSA Report⁵⁵ as:

..."as "maximum number" of A-Es would present "technical and price proposals" in response to a scope of work circulated by the awarding agency in a Request for Proposals. The agency would rate the technical proposals first, then attach corresponding price proposals, and select the A-E whose proposal best serves the government, price and other factors considered. It is important to note that "competitive negotiations" requires consideration of the price of services before the A-E is selected for a project."

The meaning of "price and other factors considered" is amplified by the majority report of Commission on Government Procurement 1972 (hereafter, the CGP Majority Report)⁵⁶ in a way that places fees in a particular context, that is:

taking into account the technical competence of the proposers, the proposed concept of the end product, and the estimated cost of the project, including fee. The Commission's support of competitive negotiations is based on the premise that the fee to be charged will not be the dominant factor in contracting for professional services. The primary factor should be the relative merits of proposals for the end product, including cost, sought by the Government, with fee becoming important only when technical proposals are equal. The practice of initially selecting one firm for negotiation should be discouraged, except in those rare instances when a single firm is uniquely qualified to fill an unusual need for professional services.

The 1976 Report of the General Accounting Office on this subject⁵⁷ (hereafter the "GAO Report") recommended a selection system which included "fee considerations as a factor." "The Federal Government should select architect-engineer firms and award contracts on the basis of the best value in terms of design performance and life-cycle cost," according to the GAO Report, and, "The focus should be on the proposed project rather than past performance".⁵⁸ To accomplish this, the GAO recommended further:

The Congress should consider provisions for reimbursing the losing architect and engineer competitors for costs

incurred in preparing technical proposals and life-cycle cost estimates, where the nature of the project has unusual requirements or characteristics.

GAO proposed a nine step selection procedure to implement this recommendation, including three screening and evaluated phases to be conducted by the government prior to the final award. The first evaluation is for "technical qualification" of the firm; the second evaluation is of "technical proposals" of the remaining firms "from the standpoints of (1) potential for meeting functional requirements and (2) aesthetic appeal;" the third evaluation is of the remaining firms' "fully developed" proposals, which includes their proposed fee, and is when "the project proposals of the firms are ranked on the basis of design excellence and life-cycle cost considerations. Fee is considered only where competing proposals are relatively equal."⁵⁹

A system of this type is operating in Maryland, although not by any means as elaborate in application as the GAO model.

The third classification of selection system is one usually called Competitive Bidding, which this report will refer to as "Restricted Bidding." Under restricted bidding, some set of applicants -- either all applicants, or those selected as semi-finalists or finalists -- submit sealed fee bids. The bids are not project proposals, but only concern themselves with total fee, either as a lump sum or as a percent of construction costs. At some point, a group of applicants is selected and judged to offer equal qualifications. The award is made to the firm among these which has presented the lowest bid. The system is "restricted" in that fee is the deciding factor, but only as among a group considered to be qualified to provide the services.

The study report which led to Maryland's competitive negotiation system ⁶⁰ noted in regard to restricted bidding that it is not a generally practical procedure:

. . .we recommend that the boards for selection should have the responsibility of proposing bidding for professional services when it has determined that a project may be so completely and definitively described as to lend itself to that process. The number and nature of such projects remain to be demonstrated in the boards' continuing deliberations and recommendations. Long experience makes abundantly clear that adoption of this route, as the sole procedure, would not be in the public interest and would result inevitably in dissatisfaction, controversy and ultimately in long court actions.

The Task Force is strongly of the belief that with some exceptions, price competitive bidding, with award to the lowest bidder, is hazardous and uneconomical.

The Commonwealth of Massachusetts became the only state to use a restricted bidding procedure when it was instituted by the King administration in 1979 over

the protests of the majority of the Designer Selection Board. In its statement of the alternative designer selection procedures under consideration, the 1974 GSA Report:⁶¹ stated,

The Subcommittee found very little support for a third position, requiring award of contract to the "lowest qualified bidder". Even those who favor increased competition oppose any law or procedure that would exert pressure on the awarding authority to base his decision on the lowest price.

The case for competitive negotiations, in which fee is a factor in selection, as stated by various sources, is that it:

- . Emphasizes the design proposal, not the proposer, thereby improving design and opening government contracting to less experienced firms;
- . Saves money, either in fees or in life-cycle cost;
- . Is a practical way to decide among equal firms or proposals;
- . Safeguards against corruption in design awards.

The case for restricted bidding can be summarized as:

- . Saves money in fees;
- . Safeguards against corruption;
- . Is a practical way to decide among equal firms.

Proponents of competitive selection, in which fee is negotiated with a firm only after it is ranked as the foremost applicant, offer rebuttals to each of these points, suggesting primarily that in either alternative system:

- . Price invariably becomes the dominant factor;
- . Quality suffers;
- . Total costs rise;
- . Small firms suffer;
- . Corruption goes on, while only its appearance is lessened.

Each of the points and counterpoint deserve careful analysis.

Fee Bidding: -Particulars

"Possibly the major improvement" to be derived from competitive negotiations, according to the GAO, "is focusing attention on the project proposal rather than on past experience."⁶² This assumes that there will be well developed proposals, and offers the possibility that competition among proposals will result in more creative design solutions and in better access to new firms which may not have the track record of others but which may have a better idea to propose. Paul Schnitzer, Associate General Counsel for the GAO Procurement Matters stated this case at a 1977 ABA conference, that selection should be made essentially on the basis of proposals, "not on the basis

of somebody's history, experience, education, and accomplishments." In support of this view, he cited the use of design competitions for the White House and the Capitol, the use of competitive selection to choose the designer of the Rayburn Office Building, and the failure of the Army to solicit a proposal from the Wright Brothers for the initial development work on airplanes. By analogy, he contends that using competitive selection has results comparable to having "Joe DiMaggio. . .still playing center field for the New York Yankees instead of selling coffee machines on television."⁶³

Obviously, this approach will cost somebody something in the preparation of proposals. The GAO recognizes this fact and suggests government funding:⁶⁴

In developing life-cycle costs and preparing project proposals, expenses are likely to vary depending on the complexity of the project. In some cases the expense might be prohibitive to small or medium size firm and might even be somewhat of a burden on larger firms. We believe, therefore, that consideration should be given to paying A-Es for these expenses where the nature of the project merits this action.

Mr. Schnitzer likewise recognizes the cost of proposal preparation as potentially discouraging the "new" design firms which this system is supposed to help. He stated,

"I recognize that, and I think I have an answer for that. There is a parallel in other parts of government procurement. That is that if you can find some kind of low, common denominator, whatever it may be, in terms of the project, in terms of the concept, then you will be able to have some kind of competition on that. It would then be possible to award the contracts. I say that advisedly in the plural because I would suggest parallel development which is now being used, as you probably know, on major weapons systems in the federal government, and those further developments could be funded by the governmental agency. . .those people who have been in the semi-finals, you might say, will have been funded."

The fallacy of of this advantage lies in its not deriving from the use of fee as a selection criterion. Placing greater emphasis than is currently done on proposals rather than past performance is a laudable goal, and is the basis of the familiar concept of the design competition. The use of fees as a selection factor, of itself, does nothing to promote a proposal oriented selection process of the kind advocated by GAO. As the GAO Report and their Associate Counsel acknowledge, the logical extension of this approach requires some government funding of the competitors if many firms are to be encouraged to take the risk of competing. As the GSA Report noted,⁶⁵ "A-E firms would incur increased costs if they are forced to prepare written proposals in order to be considered for projects. Such proposals are expensive and the procedure would favor larger and well capitalized firms." The use of government funding to offset this effect results in greater government spending during design, rather than the economies

put forward as another advantage of competitive negotiation. It would thus appear that in order to achieve a goal -- emphasizing proposals more -- that can be achieved without using fee as a selection factor, the introduction of competitive negotiation will either exclude smaller firms or increase government costs. There are certainly projects of a nature to justify the increased costs associated with design competitions, but we decline to recommend such costs as a built in part of the designer selection for every project.

It should also be noted that the advantages of a proposal orientation are not gained using the restricted bidding system. Restricted bidding involves no proposal development, and logically so, in that it makes no sense to compare bids on proposals that are different in terms of the product they will deliver. Regardless of the merits or drawbacks of a proposal orientation, it is entirely inapplicable to the Massachusetts restricted bidding system.

The next most frequently cited advantage of competitive negotiations is the savings to be realized from fee competition: savings in designers' fees and in the total cost of public buildings. Neither the GAO nor the Commission on Government Procurement held out the reduction in designers' fees as a purpose to be served or benefit to be gained from competitive negotiations. Paul Schnitzer, GAO Associate Counsel, does however, in his remarks to the ABA Model Code Conference:66

. . .how much difference is there between the way you approach price [competitive negotiations] and the way Alternative A [competitive selection] approaches price? Certainly, if in Alternative A the company selected does not agree to what the government representative considers to be a reasonable price, then there is no necessity to contract with them...the difference is that if I know...that you have selected me, then the 'reasonable price' which I can negotiate is going to be perhaps considerably different than what I might be willing to consider if I think there are two or three more people directly behind me still in a position to possibly win the race.

The Massachusetts restricted bidding system is largely justified as reducing costs at a time of hard pressed operating budgets and high interest rates for capital outlays.

Indeed, of the first forty-four design contracts awarded through the designer selection board process since the King Administration established restricted bidding, the administration claims to have saved \$477,416 in design fees.

If competitive negotiation or restricted bidding were justified solely on the basis of saving money on designers' fees, it is our conclusion that there would be no justification for it at all. It is the overwhelming opinion of every large scale study on this subject, including the GAO, that fee savings do not warrant the use of competitive bidding and are not a valid goal in designer selection.

The reduction in designer fees is almost universally regarded as a false economy, eaten up by the cost of funding the preparation of proposals under the competitive negotiation process and likely to increase the cost to construct and operate most buildings in any case.

A closer look at the results of the King administration's procedure show the immediate saving to be far less than alleged and insignificant in context. The savings ascribed by the administration is the difference between the winning fee bid and the fee which would have applied under the old BBC fee schedule. At a time when federal agencies were limited to paying no more than six percent as a fee, the old BBC schedule offered fees ranging up to fifteen percent for some small projects. The old BBC schedule was consistently inflated unreasonably in favor of designers. The only thing to be said in favor of the schedule is that it may have been reasonable in light of the pre-design work which was required on all public contracts to make up for the lack of planning and programming on the part of state agencies. A more realistic comparison is afforded by the fee which the Designer Selection Board is publishing as a suggested fee for each project. A comparison between the winning fee bids and the DSB suggested fee shows a savings of approximately \$359,000. The most significant fact about this reduction is design costs, if it were realized in the final fee actually paid designers, is that it represents only 1.7 percent of the total estimated project cost of the forty-four contracts involved, valued at \$21,088,134. Any real savings of any percent would be welcome, but apparent saving of less than two percent of project costs is more than offset by the potential increase in future cost that can result from poor design of these projects.

Support for this view is widespread. The reasoning used by state courts in exempting designer selection from bidding statutes relies heavily on this view. This statement of the Texas Court⁶⁷ is typical.

The county was vitally interested in procuring the services of a skilled and experienced person or concern to draw up the necessary plans and supervise the work while going on. To hold that contracts for this kind of work must be let to the lowest bidder would inevitably result in the county being placed in a position which would require it to accept the services of incompetent persons. Naturally, one who has no skill, experience, or technical knowledge, could underbid one who possesses the skill, technical knowledge, and experience, to perform this kind of service. In other words, to construe the statute contended for would place a premium upon incompetency and produce an unfortunate situation.

This statement applies as well to restricted bidding among a group of minimally qualified firms as it does to open bidding among all firms.

The importance of design services in the larger cost context was stated by

Study Group 13-B of the Commission on Government Procurement:68

While the direct design cost of the A/E services represents only a small part of total project cost, these design services have a profound effect on the construction, maintenance and operational costs and the life of the structure.

The ABA Report⁶⁹ dubs this role of design services as "the leverage effect". The 13-B Report went on to say:70

"Seeking to obtain A-E contract awards at lower than present dollar levels can only result in receiving A-E services at lower than present levels of quality. Even though such a trend might not be evident immediately, over a period of time, as the price-squeeze intensified, facilities would be designed with less attention to alternatives and innovations. Furthermore, duplicative and costly (to the Government) over-designing would develop as the A-E sought to protect himself.

At this point, a pyramiding of costs would occur, with construction being performed in accordance with outmoded contract documents that provide for facilities that are expensive to build and maintain. This would be the final result of the designer's inability to provide full cost-saving services to the client -- in this case the Government -- due to inadequate compensation for innovative and thorough work.

In reaching the same conclusion, the GSA Report described more fully the effect on designer's services:71

The savings that might accrue from a reduction in fees are small at best. In one A-E were willing to undercut his fellow professionals by 33%, the owner could hope, at most, for a 2 percent savings in the total cost of design and construction.

It is not likely that a firm can operate for 33% less than another firm comparably staffed for a project and equally qualified. Possibly one firm could bid 10% less than another and save the owner an apparent six-tenths of one percent of total costs.

This amount is not meaningful to the owner, especially if he considers life-cycle costs, but it is significant in the operation of an A-E office. Testimony at the Public Hearings (Ref. 7, pg. 52) suggests that a "bare bones" fee may force an A-E to take short cuts and reduce his costs in order to keep his business going. The professions do not profit from capital investments in machinery or the like. They provide manpower and brainpower for which they are reimbursed. Reduction in costs invariably means a reduction in effort. The A-E will be forced to consider fewer alternative solutions, reduce checking of design and drawings, and settle for standard practices. This reduction in effort may well contribute to higher project costs far out of proportion to any reduction in design fees.

It is ironic that in 1974, the GSA Special Study Committee foresaw these consequence resulting from a maximum 2% savings in total estimated project costs, almost exactly the result on fees of the Massachusetts restricted bidding system in 1980.

In addition to the effects already cited, the study committee established by the state of Florida to advise the Governor on designer selection procedures also

sounded this cautionary note:⁷²

. . the relationship between the professional engineer or architect and the client requires a higher level of trust and confidence than in normal commercial transactions. The Committee is of the unanimous opinion that care must be exercised in setting up professional selection procedures so as not to create a 'let the buyer beware' attitude in either government procurement officials or professionals seeking state work.

In contrast, competitive selection offers no free ride to designers. An essential aspect of competitive selection is that the client is not stuck with whatever fee the most qualified designer thinks is reasonable. On the contrary, the government never has to pay more than what it regards as a reasonable fee for the services to be performed. It is the responsibility of the government to set an informed, intelligent maximum for itself and to stick to it. Using competitive selection and negotiating fee with the first ranked designer, the government knows what it is sacrificing if it seeks a lower fee by turning to a less qualified firm. The 1972 House Committee of Government Operations Committee Report which recommends competitive selection saw its financial advantages this way:

Under this system, A/E's are under no compulsion to compromise the quality of the design or the level of effort they will contribute to it in order to meet the lower 'fee' quotations of other A/E's. They are free to suggest optimum design approaches that may cost more to design, but can save in construction costs and otherwise increase the quality of the building or facility to be constructed.

This system protects the interests of the taxpayers. Having won the competition on the basis of capability, the winning A/E must then negotiate his fee. He must demonstrate on the basis of projected costs that his fee is fair and reasonable. He must accept whatever adjustments the Government demands if he wishes to obtain the contract. He knows that if he holds out for an unfair or unreasonable fee, the Government will terminate the negotiations and award the contract to another A/E at a fair and reasonable price.

As Paul Schnitzer said, (though in the opposite context), the designer who is negotiating knows that if his fee is not acceptable, there are two or three other firms waiting in the wings.

No one argues that restricted bidding will reduce total project costs, but the GAO does contend that competitive negotiations can have that effect. Rather than focusing on a fee proposal, the GAO's "proposal oriented" approach would have the government include projected life cycle costs as a selection factor. Life cycle cost is the total acquisition and ownership cost. Using life cycle cost in evaluating proposals is a far cry from differentiating among firms based on their fees, and the GAO Report⁷³ admits many drawbacks to this approach, including the cost of proposal preparation and rudimentary state of the art of life cycle costing. The Special Commission sees

great merit in using life cycle cost projections in addition to an evaluation of the past performance of design firms, but strongly cautions against an extensive reliance on it until the reliability of life cycle cost projections are more thoroughly proven. For the present, we are more concerned that the Commonwealth develop a state-of-the-art capacity to apply traditional cost estimating techniques on construction alone.

Fee Bidding: the Concept of "Qualified"

Underlying the systems of both competitive negotiation and restricted bidding is the notion that for all design projects it is possible to find a set of at least three firms (sometimes referred to as a "maximum set of offerers") whose qualifications (including proposals) are so equal that it is reasonable to use small variations in their proposed fees to differentiate among them. This notion is typically stated in a proviso to the effect that fee is to be one of several factors considered, and only to be the deciding factor when all other things are equal. As a guiding concept it is very nearly explicit in the new Massachusetts system of restricted bidding, in which only the three or four firms recommended as finalists are actually bidding against one another. These firms are not ranked by the DSB, and are all assumed to be qualified.

The weakness of this notion is twofold. Price doesn't really remain as the factor of last resort in practice and it is rare to find two applicant firms and proposals of exactly equal quality for a given project at a given time. The ABA Model Procurement Code rejects the use of fees as a selection factor principally because "where fee becomes a factor it invariably becomes the predominant factor" (ABA, p.1). In so saying, the ABA echoes the finding of the special study group of the Commission on Government Procurement, which concluded that it is in the nature of government and bureaucracy to rely exclusively on a factor like price when it will be difficult to justify award to other than the low bidder. This seems particularly true in light of the source from which most calls for competitive negotiation and restricted bidding arise, that is, as a means of eliminating subjectivity and executive discretion in designer selection systems alleged or proven to be corrupt. It is close to a certainty that no official would risk the appearance of favoritism which would inevitably arise from choosing other than the low bidder when the fee is to be a factor in the selection process. This, of course, is the experience of the current Massachusetts system, despite the fact that when it was originally introduced by the King administration, fee bidding was proffered as one of several factors in the selection process, not the only factor. As previously noted, the absence of ranking of finalists by the Designer Selection Board and the lack of information about applicants and projects leaves the Commissioner of A&F without any criteria

of professional skill and merit by which to judge the finalists. It is only natural that the lowest fee bid has come to be the exclusive deciding factor among finalists unless fee bids are identical. This is just as the ABA and Study Group 13-8 predicted.

The result in Maryland has been similar, although not identical. According to the GAO Associate Counsel, the low bidder has been chosen for the design award on 60 percent of the contracts under consideration since Maryland began using fee bids.⁷⁴ The AIA study of the Maryland system's first year and one-half of operation found, "Price has clearly emerged as the primary criterion, with the technical proposal only window dressing".⁷⁵

Beyond the practical difficulty of keeping short-term financial considerations from dominating the designer selection decision is the larger problem involved in assuming that three or more firms and proposals of equal excellence can typically be found. It is this line of thought that underlies the justification for the favoritism and patronage that made the Massachusetts system so corrupt. To fully comprehend this point, it is invaluable to review some of the testimony of a former A&F Commissioner who admits that designer contracts were handed out as political patronage, and sees nothing wrong with that:⁷⁶

The Witness:you said simple favoritism, and I think that is what we tried to do. That is, assuming the person was qualified, fitted the project as best we could from advice from the BBC, and our own instincts, so to speak, then we favored the person who had been one of the Governor's supporters....

The Commission: ... My question is, don't you think it is rather presumptuous on the part of someone who had really no architectural background to determine whether a building in which people live and work and which is expensive and which is important and would last, hopefully, for a long time could be relegated to the level of bonuses for a political contribution because it didn't require expert or first class effort?

The Witness: . . .most of the state work can be designed by a competent but not outstanding designer...

The Commission: What would you look for as the capability or competency of an architect who you might be selecting to design a college dormitory?

The Witness: Well, it is all a matter of, in my estimation, relativity. I suppose -- I know architects like lawyers vary, and the question I suppose is, is there sort of an average competence which is adequate to the Commissioner. Now, you could say that is a bad standard, that what we should seek is the very best, the very best architects. Well, how do you determine who the best architect is to do a dormitory? I don't know how to determine it. Architects vary as lawyers do. Who is the best lawyer in Boston? I don't know...But, it is a relative matter, and it seems

to me when you are faced with practical decisions that have to be made, what you want is somebody who is competent to do the job and you just don't have the time to search all over the Commonwealth to get the best you can. The job isn't big enough to have a prize competition, and it is just sort of a practical approach. Is there evidence that the -- you studied the records, but is there evidence that the design of any of these buildings -- say the design of the dormitory, a design contract that was awarded in [our] Administration, design as distinguished from the construction, the design is faulty?

The Commission: Cape Cod Community College awarded August 11, 1964 is now a three million dollar lawsuit against the architect.... One of the most important things to me both as the occupant of a building and as a taxpayer paying for the cost of that building is the function and utilization of it, and I think an important thing in design is to have a designer who is able to squeeze usable space rather than creating unusable space which might cost the same amount of money as the usable portion.

The Witness: ...[our] standards... were, number one, general competency, not the best in the Commonwealth but general competency; and two, competency to do the particular job. I certainly, if a subsequent administration didn't use those standards, then you have bad work.

Now, I can't as far as Cape Cod goes, I just don't know enough about it, but a lot of those problems can be overcome at the supervision stage. The plans, after all, have to go through -- the architect's plans have to go through the BBC before they are acted on. It is up to the BBC and it did traditionally try to find bugs in the architect's plans.

The flaw in this thinking should be as obvious as its result. In the face of the one criterion political and bureaucratic officials understood, all other criteria vanished; the search for excellence was too demanding, and it soon gave way to being satisfied with "competence," which in turn soon became a very low standard, resulting in costly failures. In simple terms, the government cannot get everything it wants, both excellence and the lowest available price. Design, no more than any other human endeavor, allows of no "free lunches." The idea that public buildings should be designed by the least expensive competent architect, rather than the best the government can secure at a reasonable price, either ignores these realities or demeans the public that pays for and uses public buildings. To attempt to undo this logic by resort to call for rigorous supervision and control by the BBC or any other project management agency is to fail to understand the nature of most design work and the distinction between design and construction. Good management is essential, but no substitute for good design. The selection system should be geared to minimizing - not maximizing - the need for costly supervision. Further, design services usually cannot be specified in a scope of work the way plans and specifications detail the work to be performed under a construction contract. It is not that

construction requires any less skill and professionalism, but that the end product is known in advance and described in minute detail. In the design process, the best that can be known is the exact nature of the problem to be solved, the functions the design is to serve, and the goals the user hopes to achieve. In the words of the dissent to the Maryland Task Force Report:⁷⁷

..."competitive bidding is not an acceptable procedure in the interests of the client because of the impossibility of adequately defining the scope, extent, nature and details of the project, hence there is no valid basis of comparison of the price proposals."

As the whole concept of bidding requires that all bids be compared, the difference in professional merit among firms and the impracticality of adequately specifying almost all design services make this procedure unacceptable.

Fee Bidding: Integrity

The remaining advantage claimed for competitive negotiations (using fee as a selection factor) and restricted bidding is that they reduce the opportunity for corruption allowed by the exclusive use of more subjective criteria, and that they increase public confidence in the selection system.⁷⁸ The initiation of restricted bidding by the King Administration was in response largely to the same allegations which brought about the establishment of the Special Commission.

The ABA Model Procurement Code Project concluded that, "None of the A/E selection procedures studied will solve the problems of corruption and illegal conduct by professionals and politicians. However, the likelihood of this occurring is minimized when the selection process requires open competition, documentation of why a particular firm was chosen, opportunity for public scrutiny, and the selection decisions were made by individuals insulated from political influence".⁷⁹ We concur, particularly in light of the Commission's extensive investigation into corruption. Only the use of the lowest fee bid as the exclusive basis for selection has the remote possibility of eliminating the corruption of more subjective factors. When fee is one factor among many and the low bidder does not necessarily get the contract, the public is no better off in an effort to determine why the chosen firm was selected than it is when fee is not a factor. Even the use of fee as the decisive factor among the finalists offers no certainty that political favoritism or corruption did not influence the process, because subjective features would be used to narrow the universe of applicants to the small group of finalists. The Commission's investigations have shown that many factors beside merit have been brought to bear in some firm's selection as finalists by the DSB.

The drawbacks of using a pure bidding system or even a restricted bidding

system are, as developed above, so extensive in terms of quality and cost of projects that they are not counterbalanced by the misleading appearance of pure objectivity to be gained by fee bidding; misleading because of the subjectivity of the narrowing process, misleading because bids can be rigged, and misleading because of the extent of corruption that can and does occur after the contract award. Although it should not be taken to diminish the extent or gravity of corruption in the obtaining of awards, the testimony of William Masiello is that to designers and politicians the opportunities for kickbacks and payoffs after the award and during design and construction are at least as important and lucrative as the initial design award. Much in the same way that a designer whose fee is reduced by the necessity of paying a bribe feels obliged to make up this expense by shaking down contractors and suppliers and by falsely billing the government, so too might a designer feel the need to recoup the losses incurred through an apolitical reduction in his other fee. For unscrupulous designer firm principals, award via a low bid may be sought and obtained on the expectation of just such practices. The Commission's research also discovered that upward adjustments of fee during the design process are common on state projects, a practice which, if continued, makes the initial fee largely irrelevant. Again, fee bidding has done nothing to reduce the opportunities for corruption in the post-award adjustment of fees but instead has hidden that possibility behind a facade of incorruptability.

Fee Bidding: Conclusion

In conclusion, the goals of the designer selection process should not include minimizing designers' fees. Making fee part of the selection process will not save the taxpayers' money. Rather the practice is likely to increase the ultimate costs of the public building system due to a reduction in design quality, while at the same time offering no actual benefit insofar as reducing the opportunities or occurrence of corruption. To restate the goal the Commission finds appropriate, it is to obtain the best possible design services available within a given fee parameter or limit, and to do so in a way that leaves all participants in the process accountable for the part they played, that places ultimate responsibility in one, focused place, and that allows all parties -- the public, the media, the losing designers, supervising officials, and any future investigative bodies -- to understand the particulars of any selection decision after that decision was made. We endorse the criteria proposed by the ABA Model Procurement Code Project for designer selection systems, and now turn in this report to a description of the elements of the system the Commission proposes for Massachusetts.

SPECIFIC RECOMMENDATIONS

Achievement of the stated goal requires that the choice of designer be made on the basis of information about the proposed project, the type of services and special characteristics (if any,) required of the firm, the quality of experience of the personnel which will work on the project, and the quality of any design (as distinct from fee) proposal which applicants are required to submit. In order to meet the objectives, these judgements must be made by people who themselves are qualified to establish such criteria for a given project and to weigh how well each applicant meets the criteria. The potential applicants must have ready access to the information about the project and the selection criteria, and the selectors must likewise gain access to the relevant information about the applicants. The process must proceed and be recorded in such a way as to make clear that the selection flowed from the criteria, not vice versa and not from any hidden criteria such as political influence, friendship, or personal gain.

The process should result in a recommendation of the firm most qualified to perform the required services, but in recognition of the general uncertainties of life and the specific bargaining disadvantage the government would place itself in if there were only one selected firm and an undifferentiated group of other "unqualified" applicants, the process should also result in a recommendation of several firms exceptionally well qualified to perform the services but ranked in the order of their qualification. As a general rule, and barring unsuccessful fee negotiations, the first ranked firm must be awarded the design contract if the process is to result in applications from the highest quality designers, in the award to the most qualified applicant, and in public confidence in the government's selection process.

The value of this process would be minimal if, for all the integrity of the system, it is applied only to certain classes of public contracts. As far as practical, all government design contracts should be awarded through such procedures, whatever the modifications to any individual jurisdiction's resources and needs. To avoid a waste of expertise and the potential for a multiplicity of idiosyncratic implementations, one process should be established.

Models:

It would not be worthwhile to describe and analyze every precise alternative form of implementation that could adequately embody these requirements. Previous studies have shown that there are numerous ways of achieving the stated goals, and that common threads run through existing systems. A study conducted for the state of Illinois found a set of ten principal characteristics most usually observed in selection systems.⁸⁰ They are:

1. Project Identification
2. Establishment of selection criteria and weights;
3. Public advertisement;
4. Response by interested A/Es and/or agency maintains comprehensive qualification list;
5. Pre-selection or screening function to "short list";
6. Interview of final A/E candidates;
7. Evaluation, scoring, and tabulation of two or three best qualified firms;
8. Approval of ranked A/Es by agency head;
9. Fee negotiation by agency and selected A/E;
10. Execution of contract.

Not all these characteristics existed in every system studied. As they noted:⁸¹

These repetitive characteristics were seen, to one degree or another, in almost all the selection systems reviewed in the study; to a greater degree in the Federal systems (although not always in the given order) and to a lesser degree in most state systems. In the latter case, it was often observed that while not every characteristic was provided for in every system, its absence was usually the result of a specific legislative requirement which pre-empted it, or a long-standing custom of the construction agency which made its employment in the system an incongruous part of it.

As a summary of their findings, the Illinois study offered an information matrix on how four federal agencies, nine states, and three "public benefit corporations" compared on twenty-five characteristics. A copy of that chart⁸² appears here as figure The Illinois board study concludes with an outline of three "model" selection procedures⁸³ in the form of flow charts, all of which are presented here as figures. Lest these charts be taken too literally as blueprints, it should be noted that the study refers to them as "skeletal".⁸⁴

The American Bar Association has developed a model procurement code, based on a careful study of the essential elements of existing procedures. The goals they put forward⁸⁵ fundamentally those we recommend. To achieve these goals, the ABA Model Code Project describes a series of laws, regulations and procedures⁸⁶ which are relatively general by their very nature as a model. It is useful to note that the Model Code recommends among its many provisions the following:

- . Advertisements for applicants should include the selection criteria that will be used;
- . Applicants should file and annually update information about their firm;
- . Following the initial screening process, at least three firms should be chosen for discussions of "anticipated

concepts and relative utility of alternative methods of approach;"87

- . The three finalists must be ranked;
- . Selection criteria should include (but not be limited to): specialized experience and technical competence with the services required; capacity to perform within stated time limits; past performance on public and private contracts as to such factors as cost control, work quality, and adherence to schedules;
- . Documentation should be made of each step in the process, including a record of the fee negotiations.

The Model Code also suggests that "desirable options" include:

- . Prohibition of contingent fees;
- . Prohibition against any public employee benefiting from the contract;
- . Certification of truth-in-negotiations; and
- . Establishment of a public advisory panel for use by all units of state and local government.

Of even more specific application is the study conducted in 1975 by the Massachusetts State Association of Architects Select Committee on the Designer Selection Board. At that time, the M.S.A.A. was taking advantage of the election of a new governor, who had been a champion of designer selection reforms while a state representative, to review the working of the DSB ten years after it was created by legislation introduced by Senator James A. Kelly, Jr., then chairman of the State Administration Committee. In addition to the findings already noted in this report, above the MSAA Report recommended improvements to the operation of the DSB. Where appropriate, their recommendations are noted among our recommendations, which follow.

Specific Recommendations

The recommendations of the Special Commission have now taken legislative form and, with amendments, been enacted. Presented here are the new designer selection procedure and those of our recommendations which were not enacted, both without amendment and in non-legal prose. (Noted throughout are citations to Chapter 579 of the Acts of 1980, which is the Construction Reform Act.)

INFORMATION MATRIX A/E SELECTION (Fees In Excess of \$10K)				FEDERAL AGENCIES						STATE AGENCIES						BENEFIT CORPS.			
				COE	GSA	USPS NE Region	VA	CA	FL	IL	MI	NY	OH	PA	TX	WI	NYS Dorm Auth.	NY/NJ Port Auth.	NYS U.D. Corp.
1) PROJECT AS LEGAL RQMT ADVERTISED		YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	NO	NO	YES	NO	YES	NO ²¹	NO	NO
2) QUALIFICATION FILES MAINTAINED?		NO ¹	NO ¹	NO ¹	NO ¹	NO ¹	NO ¹	NO	NO	YES	NO	NO ¹	YES	YES	NO ¹	NO ¹	NO ¹	YES	NO ¹
3) PRE-SELECTION OR SCREENING?		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
A. IN-HOUSE		X	—	X	X	X	X	X	—	X	X	X	X	—	—	—	X	X	—
B. PUBLIC/CLIENT AGENCY		—	X	—	—	—	—	—	—	—	—	—	—	GOV. PANEL ⁹	X	X ¹⁵	—	—	—
C. COMBINATION OF A + B		—	—	—	—	—	—	—	X	—	—	—	—	—	—	—	—	—	X
4) FIRM EVALUATION CRITERIA? 11-B		YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO	YES ⁵	YES	NO	YES	YES	NO	NO
5) FIRMS INTERVIEWED?		YES	YES	YES	YES	YES	YES	YES	YES ¹⁹	YES	YES	YES	YES	YES	YES	YES	YES ²²	YES	YES
A. AVERAGE NUMBER		3-5	5-9	3-5	3-6	3-5	3-6	3-6	4	3-6	6	5-7	3-5	5-7	3	6-9	3	6	3-6
6) PRIOR PROJECTS VISITED?		YES	NO	NO	NO	NO	NO	OCCASIONAL	N/A	AS NECESSARY	OCCASIONAL	OCCASIONAL	OCCASIONAL	YES	NO	OCCASIONAL	YES	YES	YES
A. CLIENTS CONTACTED?		YES	YES	YES	YES	YES	YES	NO	N/A	AS NECESSARY	YES	OCCASIONAL	NO	YES	NO	YES	YES	YES	YES
7) FIRMS RANKED AFTER EVALUATION?		YES	YES	YES	YES	YES	YES	YES	YES	YES ²⁹	YES	YES	YES	YES	YES	YES	YES	YES	YES
A. NUMERICAL PREFERENCE		YES	YES	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES	YES	NO	NO	YES	NO
B. ALPHABETICAL		NO	NO	NO	NO	NO	NO	NO	NO	YES ²⁹	NO	NO	NO	NO	NO	YES	NO	NO	NO
C. OTHER (DESIGNATE)		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
8) WHEN IS FEE DISCUSSED?		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
A. IN ADVERTISEMENT		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
B. IN INTERVIEW		—	—	—	—	—	—	—	—	—	—	—	—	X ¹⁰	—	—	—	—	—
C. AFTER SELECTION		X	X	X	X	X	X	PROJ. BUDGET	X	X	X	X	X	—	X ¹²	X	PROJ. BUDGET	X	X
D. OTHER (DESIGNATE)		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
9) FINAL SELECTION MADE BY		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
A. AGENCY HEAD/CONTRACT OFFICER		X	X	X	X	X	X	X	X	—	—	X	—	X	X ¹³	X ¹⁶	—	—	X ²⁵
B. SELECTION BOARD		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
C. OTHER (DESIGNATE)		—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—

- N/A = NOT AVAILABLE
- 1 - AGENCY MAINTAINS PREVIOUS EXPRESSIONS OF INTEREST BY A/E (254'S OR SIMILAR).
- 2 - ON SPECIFIC REQUEST OF A/E FIRM.
- 3 - USED UNSATISFACTORILY ONLY ONCE.
- 4 - JOINT CAPITAL OUTLAY SUBCOMMITTEE MUST APPROVE PLANNING FUND RELEASE.
- 5 - NOT SPECIFICALLY RELATED TO PROJECT.
- 6 - THROUGH OHIO BUILDING AUTHORITY (6 PROJECTS)
- 7 - AGENCY REPORTS 14.5% OF FEES PAID TO MINORITY FIRMS BY POLICY.
- 8 - ESSENTIAL TO CONSIDERATION FOR ANY PROJECT.
- 9 - SELECTION COMMITTEE IS APPOINTED BY GOVERNOR OF COMMONWEALTH.
- 10 - FEE IS ANNOUNCED AT FIRST PUBLIC SCREENING SESSION.
- 11 - STATUTE BARS PREFERENCE BUT AGENCY PRACTICE.
- 11A - HEADQUARTERS UNIT DOES SO FOR PROJECTS IN EXCESS OF \$10M.
- 11B - AGENCY DEVELOPS PROJECT-SPECIFIC CRITERIA FOR EXTERNAL OR INTERNAL USE.
- 12 - MAXIMUM FEES FIXED BY STATUTE.
- 13 - CLIENT AGENCY CAN APPEAL TO AGENCY HEAD IF DIFFERENT FROM FIRST CHOICE.
- 14 - AGENCY REPORTS THREE (3) PROJECTS ON WHICH FEE COMPETITION WAS BASIS FOR SELECTION.
- 15 - FOR PROJECTS UNDER \$250K, CLIENT AGENCY NOT REPRESENTED.
- 16 - AGENCY HEAD CAN SELECT FROM 2 A/E FINALIST FIRMS.
- 17 - AGENCY REPORTS TWO (2) PROJECTS ON WHICH FEE COMPETITION WAS BASIS FOR SELECTION.
- 18 - AGENCY REPORTS FOUR (4) PRIOR TURNKEY PROCUREMENTS.
- 19 - VARIES, BUT ON ALL SIGNIFICANT PROJECTS IN EXCESS OF \$4 MILLION.
- 19A - NO LEGAL REQUIREMENT. AGENCY DOES AS MATTER OF POLICY.
- 20 - FOR SMALLER PROJECTS ONLY.
- 21 - AGENCY DOES ADVERTISE "TURNKEY" PROJECTS.
- 22 - DESIGNS EVALUATED BY JURY.
- 23 - PRINCIPAL A/E PROCUREMENT SYSTEM.
- 24 - AGENCY IS BI-STATE AUTHORITY.
- 25 - BASED ON JURY'S RECOMMENDATION.
- 26 - AGENCY REPORTS THAT EXPOSURE TO FORMAL COMPETITIONS IS LESS THAN ACCEPTABLE.
- 27 - AGENCY INDICATES THAT SUBSTANTIVE MODIFICATIONS ARE BEING CONSIDERED.
- 28 - BY AGENCY POLICY DURING PEAK-LOAD OPERATIONS. NO STATUTORY REQUIREMENTS.
- 29 - EXCEPT FOR VERY LARGE OR UNIQUE PROJECTS

INFORMATION MATRIX A/E SELECTION (Fees In Excess of \$10K)	FEDERAL AGENCIES				STATE AGENCIES								AUTHORITIES/PUB. BENEFIT CORPS.			
	COE	GSA	USPS NE Region	VA	CA	FL	IL	MI	NY	OH	PA	TX	WI	NYS Dorm. Auth.	NY/NJ Port Auth.	NYS U.D. Corp.
10) HOW IS FEE DETERMINED? A. FEE SCHEDULE OR FIXED SUM B. NEGOTIATION C. COMPETITION D. COMBINATION OF A + B																
11) DEBRIEF UNSUCCESSFUL FIRMS?	YES ²	YES ²	YES ²	YES ²	NO	YES ²	NO	NO	NO	NO	NO	NO	YES ²	YES	NO	NO
12) SELECTION ANNOUNCED PUBLICLY?	YES	YES	YES	YES	YES	YES	YES	YES	YES	N/A	YES	N/A	YES	YES	N/A	YES
13) SELECTION BOARD MAKE-UP: A. IN-HOUSE STAFF B. CLIENT AGENCY C. PRIVATE SECTOR D. COMBINATION OF ABOVE																
14) COMPETITIONS HELD?	NO	YES	NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	YES ²³	NO	YES ²⁶
15) JOINT VENTURE A/E'S EMPLOYED?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
16) MAINTAIN A/E PERFORMANCE FILE?	YES	YES	YES	YES	NO	YES	YES	YES	NO	YES	YES	NO	YES	YES	NO	NO
17) IN-STATE A/E PREFERENCE?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	NO ¹¹	YES	YES	NO	NO ²⁴	YES
18) CONTRACT CONSTRUCTION MANAGEMENT SERVICES?	NO	YES	NO ^{11A}	NO ³	NO	NO	YES	YES	NO	YES ⁶	NO	NO	YES	YES	YES	YES
19) TURNKEY OR DESIGN/BUILD USED?	NO	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO	YES ¹⁸	YES	YES	YES
20) AGENCY SATISFIED WITH PRESENT A/E SELECTION SYSTEM?	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
21) MINORITY A/E "SET-ASIDES"	NO	NO	NO	NO	NO	NO	NO ^{19A}	NO	NO	YES ⁷	NO	NO	YES ²⁰	YES	YES	YES ²⁸
22) PREFERENCE BY LEGISLATIVE DISTRICT	NO	NO	NO	NO	YES	YES ²⁰	NO	NO	NO	YES	NO	NO	NO	NO	NO	NO
23) SOURCE OF AUTHORITY FOR SELECTION SYSTEM	STATUTE	STATUTE	STATUTE	STATUTE	AGENCY REG.	STATUTE	BOARD RULES	AGENCY REG.	AGENCY REG.	BOARD RULES	STATUTE	STATUTE	AGENCY RULES	AGENCY PRACTICE	AGENCY PRACTICE	AGENCY PRACTICE
24) CURRENT AGENCY STAFF SIZE (D & C)	39,000	300	34	200	20	35	160	60	N/A	60	360	25	130	105	950	40
25) AVERAGE ANNUAL CONSTRUCTION VOLUME (IN MILLIONS-NEW FY WORK)	2,000/ 4,000	300	17	500	80	100/ 200	100/ 200	120	100	250	100	50	37	400	100	20

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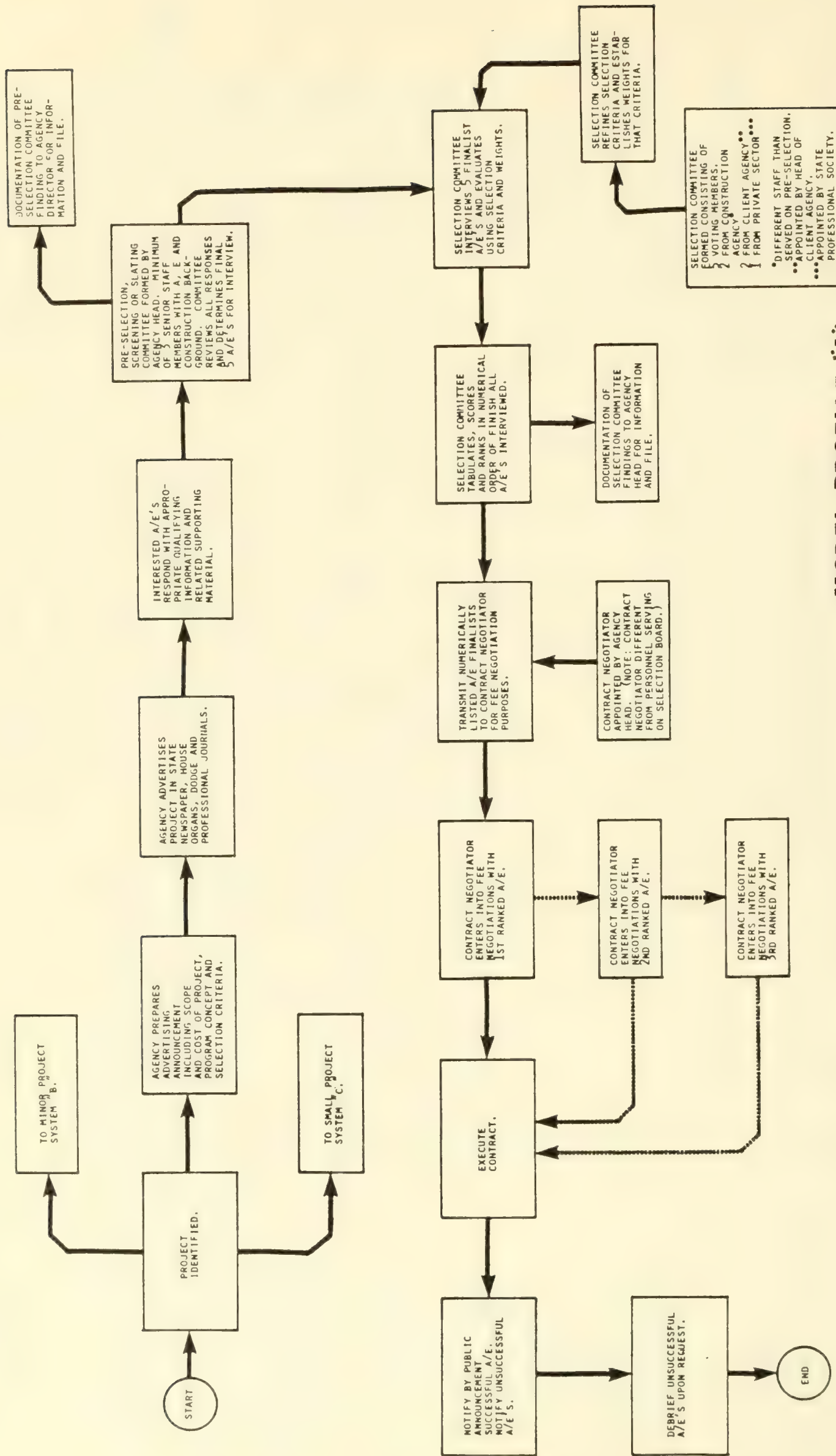
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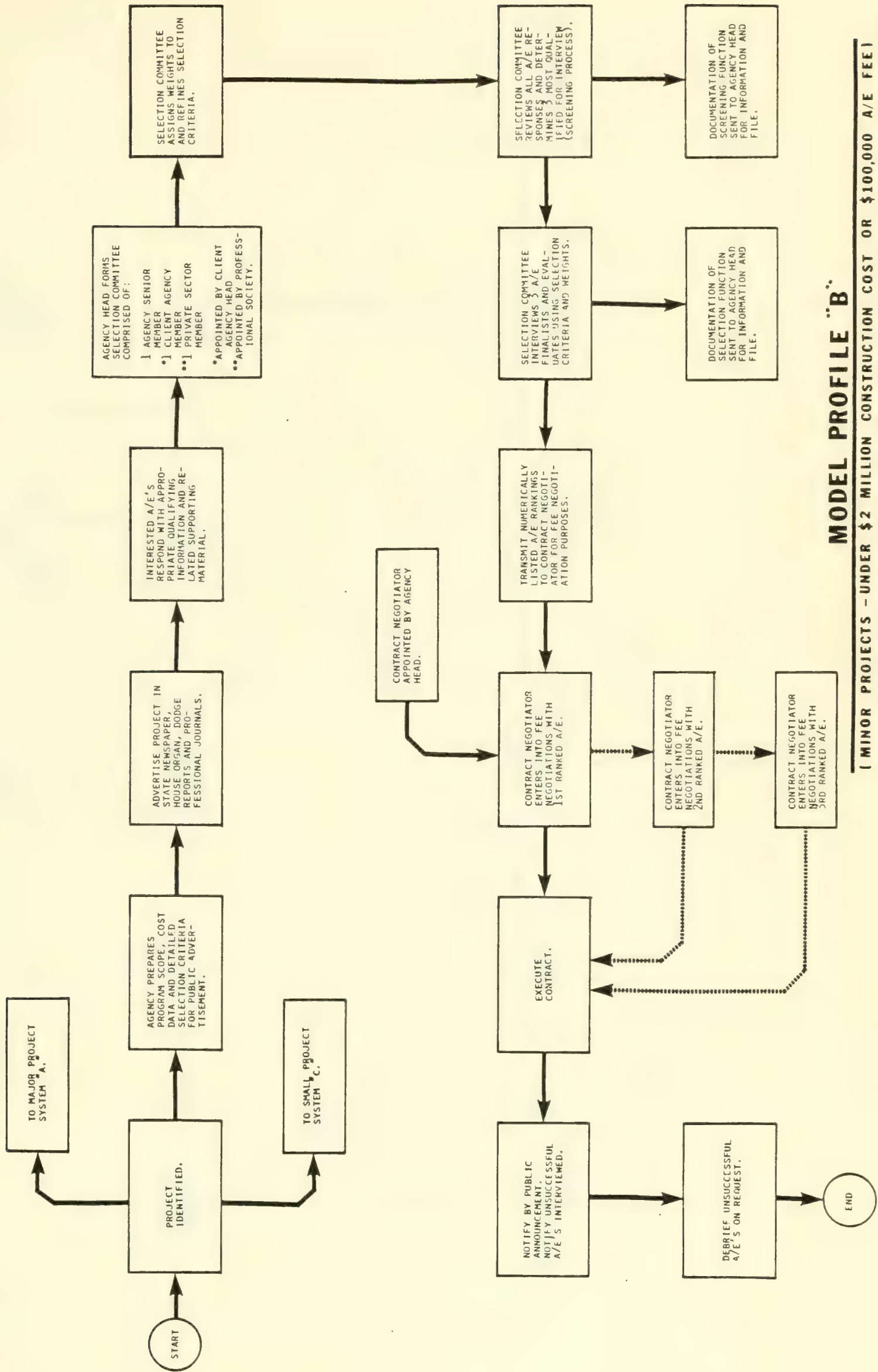
28 - BY AGENCY POLICY DURING PEAK-LOAD OPERATIONS. NO STATUTORY REQUIREMENTS.

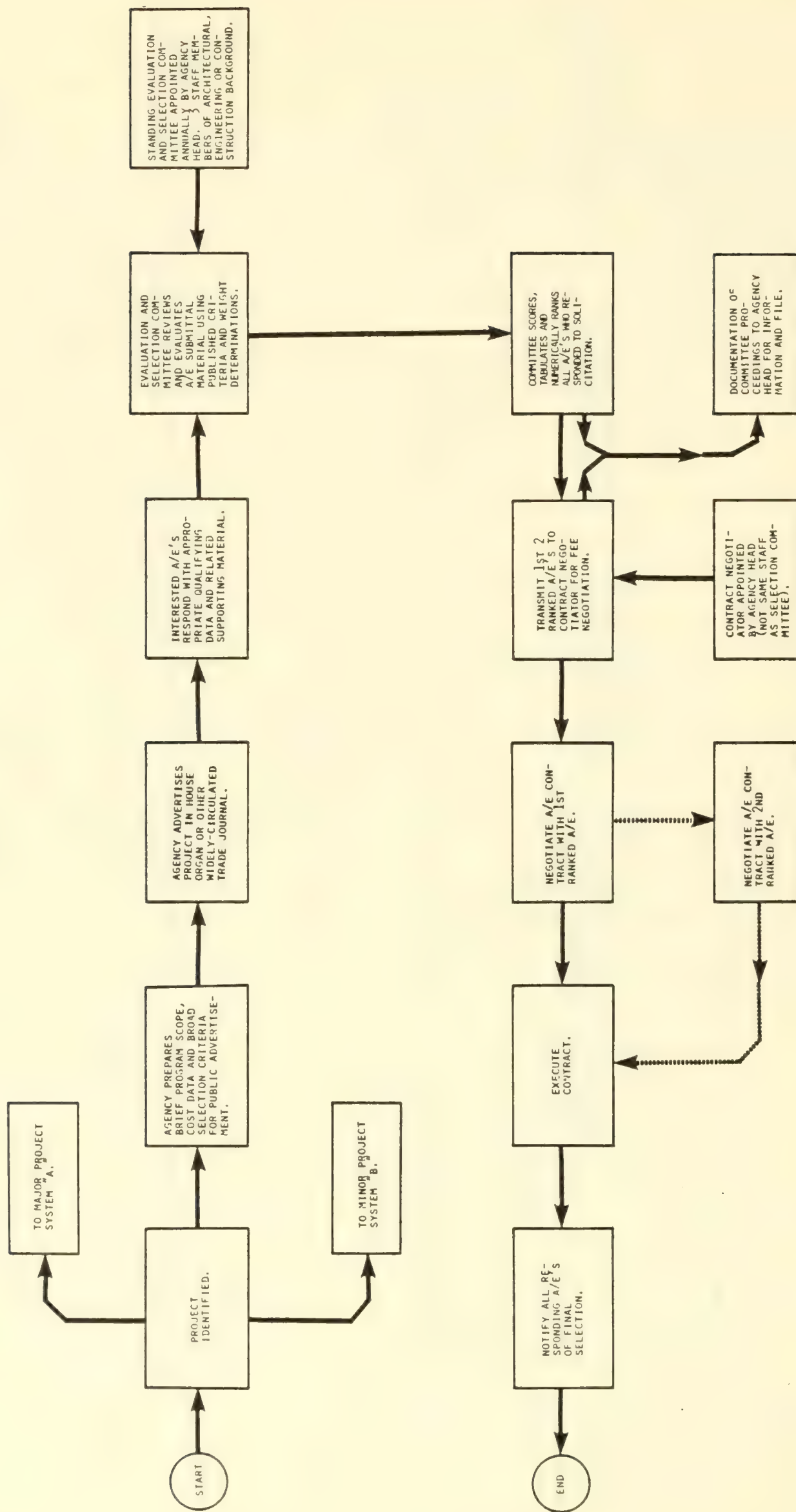
29 - EXCEPT FOR VERY LARGE OR UNIQUE PROJECTS.



MODEL PROFILE "A"

(MAJOR PROJECTS - OVER \$2 MILLION CONSTRUCTION COST OR \$100,000 A/E FEE)





MODEL PROFILE "C"

(SMALL PROJECTS - A/E FEES LESS THAN \$25,000)

Unless otherwise noted, all references are amendments (contained in Section 51 of the Act) to Chapter 7 of the Massachusetts General Laws.) An asterisk (*) appears following the recommendations which were not enacted in 1980 but which the commission recommends should be either an amendment to the law or implemented administratively.

Selection

The firm ranked first by the Designer Selection Board as most qualified to provide the services required for the particular project under consideration is normally to be selected for award subject only to successful negotiations of a reasonable fee (see below).⁸⁸ The Deputy Commissioner of Capital Planning and Operations is to be responsible for any fee negotiations that are to occur, for executing the contract, and making the award.⁸⁹ The Deputy Commission must be provided not only with the names of recommended firms in ranked order, but also with information from the DSB on the criteria used and how those firms meet the criteria.⁹⁰ The Deputy Commissioner should receive a list of all unsuccessful applicants for each project. (*)

The Deputy Commission will have to justify in writing any award to a finalist other than the highest ranked, and the justification is to be based on the criteria established for the project or on his/her failure to successfully negotiate a reasonable fee with that finalist.⁹¹

DSB Procedures

Selection criteria are a prerequisite to every selection procedure. The DSB is not required to adopt specific criteria for each project,⁹² which may be prepared by the Division of Capital Planning and Operations (DCPO) and the DSB staff, and which may include general criteria applicable to classes of projects (*). The criteria should be based on the program for the project and may be weighted (*). Criteria must be adopted before applications are requested to enable unqualified designers to refrain from applying and to guarantee the integrity of the process.⁹³

Requests for applications must be advertised in the Commonwealth's Central Register and in appropriate private publications to reach designers.⁹⁴ The advertisement must include the estimated construction costs of the project (if known), a description of the project sufficient to enable designers to know what specialized skills are required, the time period within which the project is to be completed,⁹⁵ the selection criteria or where they are available (Sec. 30.E.b. iii), the availability of a program, information about any briefing

session to be held to further describe the project or the selection process,⁹⁶ whether the fee is to be negotiated or has been set, and if set, the amount of the fee.⁹⁷

Advertisements should be prepared by the DSB staff as per MSAA recommendation 6.1:

Project descriptions shall be prepared by the Executive Secretary in collaboration with the Operating Agency representatives and [DCPO] for [DCPO] projects or with Agency representatives for non-[DCPO] projects. Prior to issue, they shall be reviewed by DSB which shall be responsible for their final form. (*)

Applications are to be by use of two forms: an annually updated general information form⁹⁸ and a form with information specifically relevant to the project criteria.⁹⁹ The annual form should contain information about projects as per MSAA recommendation 6.4:

- a) Projects for which the firm or any officer or partner was the Architect/Engineer of record.
- b) Projects for which an officer or partner was not the Architect/Engineer of record, provided the name of the Architect/Engineer of record is given and a description of the responsibilities and scope of the services rendered by the officer or partner.

and such further information as is necessary to identify the principals of the firm and the firm's part and current projects.¹⁰⁰

The specific project applications should include the information recommended by MSAA recommendations 6.4.1 (referred to here as the "letter"):

Each such letter should speak to the specifics of the project outlining the firm's design goals and particular attributes for meeting the criteria set. The letter may cover the firm's current work load, principals to be in direct charge, key personnel to be assigned and preferred consultants.¹⁰¹

A model application form should be prepared by the DSB for use at the option of awarding authorities not within DSB jurisdiction.¹⁰²

The identity of Consultants to be used may be one of the criteria of selection.¹⁰³ When appropriate the DSB may require that a list of up to three consultants be provided by the applicant for each category of consultants deemed appropriate to list¹⁰⁴ and that use of one of the listed consultants, subject to successful negotiation of a reasonable fee, be a condition of the award of the primary design contract¹⁰⁵

All review and screening of applicants must be based entirely on the project criteria.¹⁰⁶ Information about any firm used to measure how well they meet criteria should be limited to items of record, whether from the application form, from an affirmative inquiry by the DSB, or from knowledge of the firm held by DSB members. (*) Firms disqualified on the basis of violation of pertinent state or federal law, according to the debarment procedure recommended by the Commission (see "Contractor Qualification) are not to be considered for design awards during the period of their debarment.¹⁰⁷

The initial screening to arrive at a "short list" of semi-finalists should be based on those criteria susceptible to objective judgement.¹⁰⁸ DSB staff should be permitted to recommend the short list provided their recommendation notes the basis on which each firm was disqualified and the names of both the recommendations for further screening and those recommended to be set aside. (*) For the screening of those firms not disqualified by technical objective criteria, a necessary part of the evaluation is an affirmative inquiry of a firm's past performance, at least as to cost control, timeliness of performance, adherence to contractual requirements, quality of plans and specifications, quality of construction superintendence, and quality of design.¹⁰⁹ This inquiry is best performed as a staff function (see below.) (*), but the judgement of the significance of the information must be strictly the responsibility of the members. In so doing, the DSB should (as per MSAA recommendation 2.4.4.4):

Compile relevant information on each applicant firm which shall summarize fields of specialization and accomplishments. Verified weakness in past performance may be noted. These reports shall not be part of the public record, but each applicant firm may see its report on request. The ability of small firms to expand their staff should be recognized provided they have a sufficient number of principals and senior staff to handle the needs of a large project. The profile of departmentalized firms working in several specialties should identify the strengths of each department. For example, a large firm in terms of overall staff may be a small firm in the strictly architectural field. (*)

Evaluation of finalists by the Board would benefit greatly from interviews and particularly on major projects, the submission of design concept or approach proposals.¹¹⁰

The DSB will continue to recommend at least three finalists for every contract award, but must rank the finalists in the order of their qualification based on the project criteria.¹¹¹ The report of the ranking should summarize the vote of the DSB (or panel), see below,

and note the most important criteria in differentiating among firms and the basis for the ranking.¹¹²

Careful records must be kept of the DSB's and the Deputy Commissioner's actions and decisions. Files for each project should include the program information, the selection criteria and weights, the names of all applicants, semi-finalists, and finalists, and a report on the ranking of the finalists.¹¹³ The DSB will prepare and make public an annual report including the projects considered (with project number and dollar size of ECC and design contract), the number of applications for each contract award, the finalists (with ranking) for each award, and the selected designer.¹¹⁴ It would be useful for this report to also analyze the distribution of finalists and contract awards for factors such as repetition of selection, new firms entering the pool of finalists and contractors, and firms with minority principals. (*)

As per MSAA recommendation 6.5:

Meetings of DSB shall customarily be open, in accord with General Laws -- Chap. 30A. When the Board votes to go into Executive session, the reason shall be entered into the minutes of the meeting. No votes shall be taken in executive session.¹¹⁵

Fees

The fee for design services should not be a criterion in the selection process. The fee is to be set by one of two methods: establishing a fixed fee, or negotiation up to a maximum limit. The method should be chosen for each project by the Deputy Commissioner (DCPO) before the project is advertised.¹¹⁶

For fixed fee projects, the fee is set by the Deputy Commissioner and announced in the advertisement requesting applications.¹¹⁷ The fee should reflect current market conditions, the cost of providing the required scope of services, overhead, a reasonable profit and the capital outlay appropriation for the project(*). The award must be made to the first ranked designer as a rule, and the Deputy Commissioner must justify in writing selecting the second or third ranked designer on the basis of the project criteria and information on record about the firm.¹¹⁸

When the fee is to be negotiated, a maximum fee should be set in advance by the Deputy Commissioner. After selection and ranking of

finalists by the DSB, a fee proposal is to be requested of the first ranked firm, supported by cost and pricing data.¹¹⁹ The firm must supply a truth-in negotiations certification, attesting to the validity of the data.¹²⁰ The Deputy Commissioner, with the assistance of legal counsel and such technical staff as can be drawn upon from the Division, should attempt to arrive at an agreement with the designer of a fee that reflects market conditions, the scope and cost of services required for the project, overhead, a reasonable profit, and the capital outlay appropriation for the project (*). Memoranda should be prepared of the minutes of all negotiations (*). If within 30 days, negotiations do not result in agreement they are to be terminated. The Deputy Commissioner is then to begin this process with the second ranked designer, and should such negotiations fail after the allotted time, the Deputy Commission should similarly request a proposal and negotiate with the remaining finalists in the order of their ranking.¹²¹ After the award of the contract, the memoranda on each negotiation should be made public and should specify any unresolvable disagreement(s) that prevented execution of a contract with a designer with whom negotiations were conducted (*).

Fees should be stated in the contract as a total dollar amount, regardless of how arrived at.¹²² Fees should not be stated as a percentage of other costs, or as unit prices. Reimbursable expenses not included in the fee should be categorized and defined, with a limit placed on each or on all such expenses (*).

Conditions of Awards

Contingent fees are prohibited and a sworn statement that they were not used is required of every designer.¹²³ The truthfulness of all information contained in designers' applications is a condition of the award, and a material misstatement will be grounds for termination of the contract.¹²⁴ The DSB should be able to recommend termination of the contract if the personnel specified in the application as project supervisors and staff, or the consultants if their identity was a criterion of selection, are proposed to be changed during the life of the contract (*). Notification to the Deputy Commissioner of such proposed changes is to be a condition of the award, and the Deputy Commissioner is to inform the DSB (Sec. 30.I.a&c). The DSB may specify additional conditions of the contract award that are

criteria in the selection process and are essential to their recommendation of a finalist.¹²⁵

Jurisdiction

Design¹²⁶ contract awards for all county and state agency building projects with estimated construction costs of \$10,000 or more¹²⁷ must be the result of recommendations by the DSB according to these procedures.¹²⁸ State agencies are those whose operations are funded by the General Fund, including the Metropolitan District Commission and all projects under the control and supervision of the Division of Capital Planning and Operations, and those of the various public higher education building authorities.¹²⁹

DSB jurisdiction is not to be lost because a state agency looses or waives construction management responsibility,¹³⁰ proposes to use staff designers,¹³¹ or proposes a continued or extended services contract.¹³² Proposals to use staff designers must receive DSB approval, based on the project program and explicit criteria for designer selection, indicating that the agency staff is competent to perform the required design services.¹³³

The procedures described apply to all design services defined by the Act. Standing lists should be used only to indicate qualifications based on general criteria for particular services of a given scope, but must not limit additional applications for a given project or be used to indicate qualification for specific projects.¹³⁴

The Department of Community Affairs should continue to play a central role in the control and supervision of state funded design and construction projects of local housing authorities. The DCA should to use the services of the DSB and require that local housing authorities award design contracts only to finalists recommended by the DSB in the same manner as the DCPO. The DCA should also have the option of establishing unique designer selection procedures provided they comply with these recommendations and meet with the approval of the DSB.¹³⁵ See DCA recommendation below.

Public agencies that serve more than one municipality are likewise required to comply with these procedures, whether by requesting the DSB to recommend finalists and choosing among them in the same manner as is

required of the Deputy Commission or by adopting their own procedures which comply with these recommendations and meet with the approval of the DSB.¹³⁶

The DSB approval process for DCA and other public agency procedures puts the burden on the DSB to show in what way(s) those procedures do not comply with the laws requirements and allow the agency proposing the procedures to revise them. Denial of DSB approving results in the DSB serving to receive and screen applicants and recommend finalists.¹³⁷

The Commission recommends that municipalities (cities and towns) to use the procedures described here (*). Smaller municipalities may not have the financial or human resources to accomplish this, or the frequency of capital outlay programs to sustain and justify the necessary institutional framework. A tradition of local autonomy, even in cities of a size to warrant these procedures, makes mandatory use of the DSB unlikely to meet with local acceptance. Municipalities should be able to use the services of the Designer Selection Board to recommend finalists,¹³⁸ subject to a fee for DSB staff services (*). The DSB should prepare a model application form and model procedures for municipalities' optional use.¹³⁹ All municipalities are required, however, to select designers using certain minimum standards to assure selection based on merit. These include:

1. Advertisement for applications to include a project description, the estimated construction costs, the selection criteria, and either the fee or the method for setting the fee;¹⁴⁰
2. Adopting written selection procedures before applications are received, providing for equal procedural treatment for all applicants in order to narrow consideration to a smaller group of at least three finalists, and also providing for equal procedural treatment of the three finalists;¹⁴¹
3. Ranking of the finalists and a public statement of any vote taken and the reasons for the ranking;¹⁴²
4. Selection of the first ranked or justification for any other selection (*);
5. Fees stated as a total dollar amount in the contract;¹⁴³
6. Reporting to the public and the state on the selection procedure, the steps taken to comply with it, and the result;¹⁴⁴

The lack of professional resources in most municipalities makes the setting of fees through negotiations unwise, and makes preferable the use of a fixed fee set in advance of advertising for applicants (*).

DSB Staff

The DSB must have a staff of their own selection if they are to accomplish effective review of applicants. The DSB is authorized to appoint an Executive Secretary who must be a registered architect or engineer¹⁴⁵ who should possess the skill and experience to perform the duties recommended here (*). The Executive Secretary should have an explicit job description with duties, to include (*):

1. Liaison with the Division of Capital Planning and Operations (DCPO);
2. Preparation of advertisements, in collaboration with the DCPO;
3. Recommending project criteria to the DSB, in collaboration with the DCPO;
4. Administer the collection of applications and conduct the affirmative inquiry to verify applicants' statements and compile relevant information on their past performance;
5. At the request of the members, recommend semi-finalists to the DSB;
6. Prepare all DSB reports, memoranda, and minutes including the memoranda informing the Deputy Commissioner of the DSB's recommended finalists;
7. Supervise any other DSB staff, have responsibility for all DSB administrative matters as delegated by the DSB, prepare an annual budget request.

The DSB should also appoint a full time clerical person to assist the Executive Secretary, and such other staff as are necessary to fully execute their responsibilities.¹⁴⁶ A budget line item should be established for the DSB account¹⁴⁷ and should fund at least the two positions described above at a level appropriate to their responsibilities and sufficient to attract highly qualified personnel (*). The DSB should initiate a budget request to the Deputy Commissioner during the usual budget cycle of the Commonwealth (*). Costs of project advertising should be set by the DCPO and most properly is part of the capital outlay for each project, as it is a one-time project-specific cost (*).

DSB Membership

The Designer Selection Board should be large enough so that members are available to conduct a thorough review of information about applicants, using extensive information about applicants and projects.

The preceeding requirements and recommendations can be expected to generate substantially more information about each project and each applicant than is currently the case, contemplate more time spent in selection for each project than is presently the case, and are likely to result in more projects being referred to the DSB. For these reasons, the number of board members will be increased to allow for panels of fewer than all DSB members to make selections.¹⁴⁸

The Governor should appoint the DSB members (the legislature allowed three professional associations to each appoint one DSB member, despite the Constitutional problems of this approach) and do the utmost to obtain the services of highly qualified individuals who are not identified as political supporters. Appointments of professionals should be made with the advice of the professional societies, but not necessarily exclusively from their nominees. MSAA recommendation 1.1.1 stated:

All persons appointed to the DSB should be knowledgeable of design and construction, having a reputation for objectivity and fairness and have a commitment to obtaining maximum quality in the State's building program. Moreover, such persons should be generally acknowledged by the profession at large to possess these qualities. A mix of ages on the board is desirable to provide both the perspective of long experience and also contact with newer trends and developments. (*)

The Commission concluded that while DSB membership should be predominantly composed of professional architects and engineers, in equal numbers, DSB deliberations would benefit from public membership and the expertise of a construction contractor. To avoid an imbalance in the influence of members, and to focus selection on the basis of the recorded program and information available about applicants, neither the Division, nor the Office managing the project, nor the using agency will have voting membership on the DSB. The DSB is to be composed of eleven members: four registered architects, four registered engineers, one general contractor, and two public members. The persons -- other than the ex officio members -- sitting as members when the Act takes effect will continue for the length of their term. All members have a two year term and are eligible for reappointment only once. The expansion in the DSB's size will be phased so as to allow the Governor, the professional societies, and the public to focus attention on each appointment.¹⁴⁹

The DSB may appoint panels, composed exclusively of its own members, to conduct the selection procedure. Panel size is to reflect

project size and complexity. Panel composition should reflect the professional expertise predominantly required on the project. Panels of fewer than all DSB members will be more conducive to thorough discussion, easier to convene, and offer more focused responsibility. Panel membership should be rotated to distribute expertise and prevent regionalism or personal identification with a project or class of projects. Panels are not to be used to set DSB policy or regulations or to select staff, or to pass on the validity of any agency's procedures.¹⁵⁰ Procedures that do not compromise any of these recommendations may be tailored to project and panel size.¹⁵¹

To prevent conflicts of interest by members, they are not eligible for contracts awarded through the DSB process, and must not vote on applications of firms in which they have any interest.¹⁵² The necessary and reasonable expenses incurred by members in the performance of their duties, such as for transportation to and from meetings, will be reimbursed by the Commonwealth.¹⁵³

Recommendations Regarding Housing Authorities

The designer selection system for public housing design contracts should be restructured along the lines recognized and noted above that are appropriate for any designer selection system. The areas most in need of improvement are the information systems and the susceptibility of the procedures to improper influence. Information systems must be improved to ensure procedural conformity to minimum selection standards. This would increase the amount of information available to designers and about designers, and would increase the ability of the DCA and the general public to review the selection process and the decision making of a local housing authority regarding any particular design contract.

In proposing changes to this system, the Commission recognizes the tradition, embodied in statute, of local decision making and control of public housing in the Commonwealth and in the country at large. No doubt the overall administration of public housing must recognize this political reality. However, if affordable and well-built housing is to be available to low-income people in the Commonwealth it is appropriate to dispassionately observe which elements of the administrative structure of the public housing system most benefit from local control and which elements suffer thereby.

It is the judgment of this Commission that the designer selection process in the Commonwealth has suffered in the name of local control. The aspect of designer selection for public housing that is most essentially local in character is the articulation of the needs of potential tenants and neighborhoods in each locality. The criteria for designer selection should be based on well-developed

general program specifications for the type of public housing to be constructed (e.g., family housing, elderly). It must also include criteria based on the program variations desired by the local housing authorities working in conjunction with the local Citizens Advisory Committee. The nature of the designer selection process in the past, however, left each local housing authority board to act on its own without adequate staff to review designers' credentials, and without the safeguard of a second party's review or approval over the local authority's decision. These conditions create an insufficient mechanism to insure the selection of highly qualified designers and do not preclude the exercise of improper influence.

It is our recommendation that most of the functions involved in designer selection be performed by persons other than the local housing authority board, acting under strict statutory requirements as to procedures and record keeping. Local boards, in conjunction with the DCA, should describe local program requirements. Our recommendations leave in place the ultimate authority of the local housing authority board for the selection of a designer.

It should be noted, in reference to the models offered by the Illinois Study cited above, that the one-to-two million dollar cost of most public housing projects would place the designer selection system for those projects under the recommended model A or model B. Both of these models are two-tier systems involving explicit selection criteria developed prior to the review of applications.

As a general matter this Commission believes that the interests of public housing authorities, tenants, local communities, and the Commonwealth, would be best served by extensively using the services of the DSB in choosing architects or engineers. A less preferred alternative, but nevertheless an improvement over the present system, would be for housing authorities to use the DCA to function as their DSB, provided the DCA had an adequate review system put in place. A third level of preference would be to regionalize designer selection staff functions on the part of several housing authorities in geographic regions of the state. The regionalized staff would perform a variety of information management functions for several housing authorities. This system would still require review of the selection process by an authority, presumably DCA, outside the local housing authority. Whichever approach is adopted, the system must be improved by a set of mandatory selection procedures and record keeping requirements.

The recommendations of the Commission which have been enacted create a statutory framework for designer selection by local housing authorities which allows a great deal of flexibility in implementation. The law requires that the

Department of Community Affairs develop a proposed designer selection procedure which must be approved by the Designer Selection Board. Although the procedure is considered approved unless the DSB acts to disapprove it, the control mechanism and review are clearly in the hands of the DSB. The statute, as enacted, enunciates standards for the DCA/LHA procedure that are closely parallel to, or identical with, the DSB procedures. The law, however, allows the DSB to exempt local housing authority projects from DSB jurisdiction if the DCA procedures meet with DSB approval. The effect of this provision is to allow the DSB and DCA flexibility to decide, together, whether to use the DSB as a professional screening mechanism or to establish a separate, but equally professional, screening mechanism solely for housing.

Having recommended that the law contain this flexibility, the Commission, nevertheless, has concluded that using the DSB for designer screening on housing projects would be far superior to duplicating this function within the DCA.

The Commission strongly recommends that local housing authorities should use the DSB to receive and screen applicants and should recommend to the authority at least three ranked finalists for selection by the local housing authority. The DCA, working in conjunction with the local housing authority, should provide the DSB with the selection criteria and program information for each project. A set of general program requirements and criteria should apply to all housing projects of a particular type, e.g., housing for the elderly. The DSB should use the same procedures recommended above for other projects to request and evaluate applications. The local housing authority (in a role parallel to the using agency and the DCA should function in a role parallel to the Division of Capital Planning and Operations) should serve as non-voting participants in the selection process. When the DSB had recommended three or more ranked finalists for each project, the local housing authority should act in a role parallel to the Deputy Commissioner of Capital Planning and Operations, selecting the designer to be awarded the contract. The local housing authority should be required to select the first ranked designer or state reasons based on the agreed upon selection criteria for selecting the second or third ranked designer.

In the alternative, a review process established by the DCA should function in the manner described above for the DSB, creating a two-tier process. The DCA must be equipped with appropriate staff to perform this function and would have to establish procedural safeguards not presently in existence within the Department. The selection procedures employed by the DCA should closely follow those recommended for the DSB, but must recognize the dangers inherent in a selection system using in-house staff only. At a minimum, such a system requires staff rotation. Reliance on an in-house selection panel also requires the use of

scoring systems and record keeping that provides more information on the role of individual staff members than is required in DSB record keeping.

The DCA, under either recommendation should function as a clearing house for information on housing designers and designs. The Department should perform evaluations on the responsiveness of designers to the design program, the technical quality of plans and specifications, the adherence to contract terms, and other factors in the designers performance. The Department should keep records of these evaluations and should also keep records of the design solutions proposed or used for housing authority projects. These records should be available for use by the Department, the DSB, and the local housing authority.

The DCA should be responsible for a comprehensive annual report on the selection of designers for public housing projects. This report should include the names of finalists for all housing authority projects and the names of all designers awarded design contracts.

As with state agency design contracts, the use of contingent fees should be prohibited for all public housing design projects in accordance with the general recommendations above. The truthfulness of all information contained in designers' applications should be a condition of the award, and the material in this statement should be grounds for termination of the contract. All persons involved in the selection process, whether at the local housing authority, the DCA, or the DSB, must not be eligible for contracts awarded through this process and must not participate in any way in the selection process regarding firms in which they have any interest.

Implementation

The law revising designer selection procedures, as amended by the legislature and enacted, defers implementation of these requirements until July 1, 1980. In our initial recommendations, the Commission sought to provide the present DSB members and A&F with sufficient lead time to prepare for these new procedures. Because most laws take effect ninety days after passage, the Commission originally recommended that an additional ninety days be allowed to elapse before the designer selection law revisions took effect. In granting a full year between enactment of these requirements and the effective date of the whole Act, the legislature eliminated any need for a separate, later effective date for the designer selection provisions of the Act. There is now no reason to implement the new designer selection law any later than July 1, 1980. The only exception to this situation -- which does not require legislative action -- is that it

would probably be unwise to commence fee negotiations at the start of operations of the new Division. That process should wait until the legal and project management staff has had some opportunity to settle in. The Commission therefore recommends to the legislature that chapter 579 of the Acts of 1980 be amended to make these provisions, embodied in section 51 of the Act, effective on July 1, 1980.

DESIGN

"No one in their right mind goes into a public building except on business." - J.B. Jackson

The previous sections of this report have portrayed an approach to planning so chaotic that the state is often unable to know what it wants, a method of programming so negligent that the state is unable to say what it thinks it wants, and a system of designer selection in which politically favored designers received contracts over more qualified firms. This section discusses project design in a manner parallel to the earlier discussions of other phases in the capital outlay process. First, the "formal" process of design is described, as it was supposed to occur during the period examined by the Commission. Second, this section will describe what happens when those designers are handed the task of giving substance to such ill-conceived plans and ill-defined programs. The results, the Commission found, were defects in the functional and technical designs produced, substantial delays in projects, increases in project costs, improper fee arrangements and payments, and illicit agreements among architects and suppliers.

Finally, this section will examine the causes of these problems, including those faults in designer selection, planning and programming already mentioned, and inadequate and misdirected design review process, lack of control over the selection of consultants to designers and, most significantly, a lack of accountability when things go wrong.

THE FORMAL SYSTEM OF PROJECT DESIGN

Preparation of the Design Contract

After appointment of the designer, the design contract was prepared on the basis of standard BBC design contract. According to c. 7 s. 41, the contract between the designer and the Director of the BBC must include

that the designer shall: in consultation with the operating agency and subject to its initial approval prepare plans and specifications for the project for submission to said director for his approval; as far as feasible, use standard contract documents and specifications which said director shall have prepared and made available in the [BBC]; [and] be charged with general supervision of construction of the project.

In addition, the contract had to provide for a "qualified clerk-of-the-works" who was to be appointed and employed by the architect but who must be "approved by the director". The basic qualifications for such clerks was laid out in c. 7 (See below, "Project Management".)

* This page properly follows p. 250.

The responsibilities of the clerk were to be specified in the contract as including

devot[ing] full time to the work of the project, oversee[ing] continuously the detail of construction, keep[ing] informed at all times of the financial status of the project, and mak[ing] such investigations for and reports and recommendations to the designer or the director as either may require.

According to the statute, the contract was to provide that, subject to the approval of the director, the designer was to be "currently reimbursed for all expenses incurred in connection with the employment" of the clerk-of-the-works.

The BBC sent notice of selection to the designer, usually with the estimated construction cost (ECC) of the project and fee, and enclosed five contracts for execution. More specifically, the BBC sent a so-called A-5 letter authorizing the designer with the "1A" (study) phase only. (Subsequent letters would authorize the "1B" (preliminary plans), "2" (working plans) and/or "3" (construction supervision) stages.) The designer sent a letter to the BBC accepting the appointment and any conditions or exceptions thereto.

Approval of Consultants

At this stage or after the contract was executed, the designer might request BBC approval of those consultants the designer wished to hire. According to the Report on the BBC Enabling Act such approval was required. G.L. c. 29 s. 29A delineated a procedure for A&F approval of the use of consultants "in all departments, offices, boards, agencies, commissions and institutions". However, it did not appear that such provision was the basis for any approval exercised by A&F in these situations.

However, the provisions of another statute, concerning disclosure by such consultants, had been a part of designer contracts with the BBC. Namely, G.L.c. 7 s. 14A required that:

No contract to provide consultant services shall be awarded by the commonwealth or by any department, board, commission or other agency acting in its behalf, unless the person signing such contract...files with the comptroller a statement under the penalties of perjury setting forth the names and addresses of all persons having a financial interest therein (greater than 1% of the capital stock of a corporation contracting to provide such services).

Execution of the Contract

Negotiations with the designer were then completed and he returned five executed contracts to the BBC. According to the Report, the BBC Director checked the contracts for complete execution (e.g., signatures, insurance, financial disclosure), signed three contracts and sent them to the Attorney General for approval only as to form. The remaining two contracts were held in the BBC contracts section. The Attorney General approved the contracts (again, only as to form) or indicated what adjustments were to be made, and returned the

contracts with corresponding instructions to the BBC. The adjustments were made and a copy of the executed contract was sent to the designer and one to the comptroller. The third copy was retained by the BBC. Contract negotiations might take place concurrently with design work. Thus, if the estimated construction cost and/or fee rate was not firm yet, the designer might be instructed to proceed on a per diem basis.)

Initial Project Conference

The selected designer, upon notification by the BBC met with a member of the Plan Examining Section and a representative of the operating agency. The purpose of the meeting was to determine and/or review the scope, function, and cost of the project as well as to familiarize the parties with other technical aspects of the project. This conference might also involve a meeting at the future construction site. After an understanding had been reached about scope function and cost (reflected in part in a conference memo prepared by the designer), the designer was directed to prepare and submit at least two schematic "solutions". When the schematics were complete they were reviewed by the Plan Examining Section and the operating agency. The latter returned the schematics with comments and/or approval to the BBC.

Preparation of Preliminary Plans and Specifications

Contingent upon approval of the schematic documents, the designer was instructed to proceed with preliminary plans and specifications. Provision was made in the statutes for appeals from decisions of the Director of the BBC disapproving plans, specifications, contracts, etc. It had bearing on this and subsequent stages of the process. In particular, it stated:

Whenever the director of building construction disapproves any plan, specification, contract, appointment of a clerk-of-the-works or payment for any project, he shall forthwith notify the requesting party, the designer and operating agency in writing of his reasons therefor. Within three days following receipt of such notice the requesting party, the designer or operating agency may appeal such action to the commissioner [of Administration], in which event the commissioner shall decide the matter.

"Any such appeal shall set forth in writing the reasons therefor and a copy thereof shall be furnished to the director at the time the appeal is filed with the commissioner.¹

During the preparation of preliminary plans and specifications there might be further conferences at the BBC or the site, attended by the BBC, the designer, and the operating agency, to discuss the progress of the work. Prior to completing those documents, the designer must have had one set stamped "tentatively approved" by the Department of Public Safety. The documents were then submitted along with cost estimates to the BBC Plan Examining Section.

At this stage, the documents included:

1. A site plan;
2. Architectural plans with room finish schedules, elevations, and typical wall sections;
3. Structural plans with alternate selections for economy in design, foundations;
4. Plumbing plans;
5. Mechanical plans (including heating and ventilating); and
6. Electrical plans.

Only the principal features of the last three items were required.

The documents were then reviewed by the Plan Examining Section and by the operating agency in a manner similar to that described above in the section on Organization of Project Planning and Management. Depending upon the results of the review, resubmissions by the designer might be required, subject to the appeal procedure described above. After the necessary approval, the designer was instructed to proceed to the preparation of working plans and specifications. The designer was required to notify the Director of any increases in ECC and one or more changes might be approved during any design phase.

Preparation of Working Plans and Specifications

A major conference including the BBC Plan Examiner, the designer, and a representative of the operating agency was held at this stage to review the comments and corrections on the approved preliminary plans and specifications and certain other matters such as the project schedule, other required approvals, etc.

The designer then prepared working plans, specifications and cost estimates. Prior to submission to the BBC the designer must have had one set stamped "approved" by the Department of Public Safety and/or by the State Examiners of Plumbers. Certain technical requirements were demanded of the specifications by statute. In particular, G.L. c. 30 s. 39M prescribed the following:

"[s]pecifications for contracts awarded pursuant to the provisions of [c. 149, ss. 44A-L, i.e., building contracts] shall be written to provide for full competition for each item of material to be furnished under the contract; except however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially...to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said named or described materials."

Payments to Designers

The only statutory provision directly concerned with payments to designers concerned the authorizations required before such payments can be made. In

particular, G.L.c. 7, s. 42 required that:

"No obligation shall be incurred or payment made for preparation of any plans or specifications for any project without the prior approval of the director of building construction; and in the case of a project undertaken on behalf of the commonwealth, no plans or specifications shall be prepared until a special appropriation shall have been made therefor or for the project or until federal funds or assistance shall have been made available therefor. No other obligation shall be incurred or payment made in connection with any project until such obligation or payment shall have been approved..."

As noted above (see the section on Organization of Project Planning and Management), the total payment made to an architect was expressed as a percentage of the total construction cost of the project. The fee increased with the size of the project although the percentage decreased. In addition, different schedules of percentage applied to different types of projects. The distinctions were based on whether a construction project was new and on the particular types of buildings involved.

Thus, there was one schedule (with the percentage decreasing with size) for new construction of college classroom facilities, gymnasiums, police stations and so on, whereas there was another schedule for new construction of armories, dormitories, skating rinks and similar facilities. An entirely separate set of schedules was provided for work which was principally of an engineering nature and yet another set for alteration projects. Finally, provision was also made for payment of the designer at standard hourly rates and for the time of any technical employee or consultant at a certain multiple of that rate (to cover overhead and profit) if the arrangement was not a fixed percentage one.

In addition to the straight fee just described, the designer might be paid for certain reimbursibles. These included certain travel expenses, telephone calls, and the services of special consultants not otherwise specified in the contract (whose expense was, in effect already, included in the designer's fee). The last might include testing, surveying and subsoil exploration which involves the taking of borings, soil sampling and laboratory tests, etc. The cost of the clerk-of-the-works, hired by the designer and approved by the BBC, was reimbursed to the designer with an additional sum (most recently 23% of the salary) to cover overhead and profit. Also, arrangements might be made for extra services, such as those arising out of unanticipated changes in the requirements for the design work (because of a modification in the agency program or because of site or construction problems).

The actual payments to designers were made according to the progress of the work. Thus, under the most recent standard provisions (which might be subject to negotiation), 15% of the fee was paid upon submission of completed preliminary plans, outline specifications, and a cost estimate; 25% (cumulative) upon

approval of those plans, specifications and estimate; 45% when the working plans and specifications were 3/5ths complete; 65% when the completed working plans and specifications, proposal forms and construction cost estimate were submitted; 70% when those items were approved; 75% when the construction contract was awarded; 80% when 1/5th of the construction work (in dollar value) was complete; 85% when 2/5ths was complete; and 90% when 3/5ths was complete; 95% when 4/5ths was complete; and 100% upon completion of acceptance of the construction contract.

In principle, if within six months of completion of the working plans and specifications, the low bid for the construction contract exceeded the dollar cost within which the designer was required to design the project (the so-called "fixed limit construction cost") the designer might be obligated to revise the working plans without additional compensation, to bring the cost within the specified limit.

PROBLEMS IN THE DESIGN SYSTEM

Poor design quality

In the course of its technical investigations, the Commission has found a disturbing number of cases of poor design in work done for the Commonwealth in the last twelve years. Some buildings in the Commonwealth are failures from an aesthetic point of view because of poor design. While aesthetic criteria are often a matter of taste, there have been some spectacularly ugly buildings, such as the MCI Concord Chapel. The blame for this lack of quality lies, if anywhere, in the designer selection process. While lack of beauty may not exact a quantifiable toll in terms of the cost or usefulness of the buildings, it does bespeak a lack of care on the part of the state and its designers and fails to inspire citizens' confidence in or admiration of the state's work. More often the buildings fail functionally, usually because of poor design and poor programming. Failures of this kind are more than cosmetic, and may have profound consequences for the original cost, the operating cost, and the useability of the buildings. Most of the examples discussed in the preceeding section on programming problems are also failures in design. As noted in that section, poorly designed programs reduce effective control over the project so that the design produced often does not adequately meet the users' functional needs. Moreover, poor project definitions on the part of the agency cannot completely absolve the architect of responsibility for failing to prevent gross programmatic errors. Examples include the inadequately soundproofed psychiatric consultation rooms at the Lindemann Health Center, the ventilation system at the State Laboratory in Jamaica Plain, which is not adequate to handle toxic materials, and

the omission of wheelchair ramps at the Cohasset elderly housing project.

One of the most infamous design disasters is the \$15 million Boston State College Tower Building, housing a library, auditorium and classrooms. As discussed in the previous section, construction of this project was stopped for six months when the user agency sought programmatic changes. When construction resumed, the original scheme was unchanged. The library, which occupies the top five floors of the building, has no single control point for entry and egress for checking books; instead, there are public entrances on each floor. Rather than staffing each entrance during library hours, the College has chosen not to use these five floors of the building. These have as a result, been empty for four years. The HVAC (heating, ventilation and air-conditioning) system of this building was zoned in such a way that the vacant floors have been heated and cooled for those four years, (although the HVAC zoning may not have been as critical a failure had the library actually been in use). The balcony of the auditorium is designed at such a low slope that the stage is not visible from any seat in the balcony.

Design errors are not limited to those which affect the appearance or usefulness of a building; many errors are of a technical nature, involving the structural soundness or mechanical operation of a building. The aforementioned Boston State College building is a case in point. Commission technical investigators found two serious fire hazards in the structure; the exterior glass facade is designed without adequate fire stops between it and the floor slabs, in an arrangement which could act as a chimney in a fire; and some structural steel is not adequately protected by asbestos, making it susceptible to stress fatigue in the intense heat of a fire. (For more detailed discussion see the section in Chapter VII dealing with Boston State)

Structural design errors were found in numerous buildings. These errors may in some cases have been exacerbated by poor construction. Many projects are the object of multiple consultants' studies and of litigation to determine the exact causes and to establish responsibility. This often results in delays of repairs for months or years. For example, the construction of the Salem State College library building was halted when it became apparent that second-story cantilevers were designed with insufficient structural support. The library had to be closed, redesigned and reconstructed before it even opened; the occupancy of the building was delayed three years and the construction contract cost increased by \$1,145,000 or 28 percent over the original contract price. The state received a \$200,000 settlement from the architects' insurance policy, although the actual costs had been much higher. This case represents one of the few times the state recovered damages from designers.

In almost every building at Cape Cod Community College, there were serious design errors: cantilever floor slabs were deficient, resulting in numerous cracks and openings in the exterior wall system; vertical rain leaders and horizontal gutters were inadequately designed; masonry walls were structurally unsound and both the design and workmanship of flashing were inadequate. (These and other construction related problems, especially relating to roofs, are discussed in the section on construction below.) As a result, the buildings leak profusely, causing severe interior water damage and loss of heat. The cantilevers have had to be shored up at a cost of \$300,000. The estimated cost of repairs to the buildings at Cape Cod Community College is \$1.5 to \$2 million.

In a parking garage at Haverhill, designed and built with joint BBC and Department of Public Works supervision, major structural cracks developed even before the two-story structure was complete. Construction was halted in June of 1979 and cannot resume until an examination of the design of the foundation and structural systems is complete. One consultant, hired by the DPW, advised that the building may have to be torn down and rebuilt.

Another common technical problem involves HVAC systems. While these may be due, in part, to faulty construction, they are more often the result of design and specification errors. At the University of Massachusetts teaching hospital, there was a multi-million dollar error in the design of the heating and ventilation system. There is no temperature control and no ventilation in the mechanical equipment room at MCI Concord. As a result, temperatures often reach 100 degrees F. HVAC problems have been observed at the Duxbury housing project for the elderly, at the University of Massachusetts' Columbia Point campus, at the State Laboratory in Jamaica Plain, at the Worcester County courthouses in Gardner, Dudley, and Uxbridge, at the Massasoit Community College Fine Arts Building, and in the McCormack State Office Building. An HVAC problem on a much larger scale occurred at the UMass Amherst Campus when the one and one-half mile conduit connecting the Tillson Farm power plant to the campus failed, rendering the \$9.3 million project totally unusable.

Many other design problems have been brought to the attention of the Commission. At the Cohasset elderly housing project, kitchen stoves were placed so close to the walls that the walls were scorched. At the UMass Amherst library, the design of exterior brick panels and their supports contributed to the brick problem which forced the closing of the building in 1979. (See the detailed discussion of this case in another part of this report.) Design errors relating to security in courthouses and correctional facilities were uncovered with disturbing frequency. Such problems were found in the mechanical equipment

room at MCI Concord (security view window), at the MCI Concord Chapel (unpoliceable areas), at the lock-up in the Worcester County Courthouse in Gardner (understrength cell doors and lock hardware), at the Worcester County Jail (light fixtures in cells, cell doors).

Delay

Projects undertaken by the BBC sometime remain in the design phase for years. During that time, construction costs escalate, program changes are made (or a program is first developed), building codes change, and the state's priorities and needs change. As a result, when the design is completed many years later, the project is considerably above budget and the designer has been paid, or has to be paid, extra fees for repeated changes in design to meet changes in program and in code requirements. Then, if the legislature has changed its priorities, the project may be abandoned or shelved for several more years, during which time the plans may again become obsolete. When the project finally reaches construction, its cost will exceed the original appropriation significantly, requiring an efficiency appropriation or a reduction in project scope.

The Commission has seen many examples of this problem; witnesses have testified to delays during design of 10 or 12 years or more.² For example, the maximum security facility at MCI Concord, mentioned earlier in this report, has remained in the design phase since the early 1960's. This has been mostly due to changes in planning goals and programming criteria in the Department of Corrections, resulting in changes in projects, the creation of new projects, and the scrapping of plans and projects.

Delays are often caused by bureaucratic procrastination or confused agency goals. Often they are a result of inadequate programming, as in the Fitchburg State College education center, which required over 6 years for design as DMH and the state college sought consultants and re-appraised a 1965 program. This revised program was not completed until March, 1970, four years after the appointment of the designer. When the working plans were finally ready for bidding, the ECC had increased to \$9 million; the legislature did not approve construction and the building was never built. The contract to design athletic fields and parking space for Lowell Technological Institute was delayed for months by the Department of Natural Resources because it originally called for the filling in of a portion of the Merrimack River. This project, in various forms, has been taken on and off the shelf for ten years.

Delays in site selection often hold up the designer's work. For example, although the designer of Bunker Hill Community College was appointed in January 1964, design did not begin until June 1968 as the Board of Regional Community

Colleges searched for a site, and created a new college (Mass. Bay in Wellesley).

Renovation projects often require long design periods: 4 of the 10 longest design periods are for renovation. For example, a significant portion of a \$2.4 million renovation project at Lowell Technological Institute was not ready for bids until 7 years after the start of design, because work "had to be adandoned to bring the project to a stage where bids could be received within the funds appropriated..."³

Another cause for delay is the requirement for approvals from the legislature and the governor when changes are made in the scope of the project,. For example, a study done in 1967 for a \$75,000 renovation to the sewage filter beds at MCI Norfolk was invalidated when the Department of Natural Resources required that an entirely new facility be built. The Legislature approved \$385,000 for this purpose in 1968, but progress was further delayed when the estimated cost doubled. A deficiency appropriation was not made until 1973 and working plans approval and construction award took place in 1974, six years after the design of the new facility was begun.

Perhaps the most costly delay incurred by the Commonwealth was the one which caused the loss of \$16,547,000 in Federal Assistance for the construction of the UMass Medical School teaching hospital in Worcester. This case is discussed in greater detail below, in the section dealing with project cost control.

Another reason for delay is that the BBC design review section is understaffed for the functions it performs. According to testimony before the Commission, each of the eleven engineers (there are no architects) in that section is responsible for supervision of over twenty projects. A manageable workload for the functions performed would be six to eight projects per engineer.⁴ With this sort of work load, it is not surprising that the project engineers cannot keep each project moving. In fact, it often takes months for a needed approval by the plan examining section, while the designer cannot proceed to the next stage of design until the previous stage has been approved.

Delays also result because the plan examining section of the BBC is expected to do too much in terms of design review. Unnecessary review is not only time-consuming, but adversely affects the designer. One architect, Terry Rankine, pointed out to the Commission that extensive design review reduces a designer's sense of responsibility for the design.⁵

Joan Belle-Isle, formerly head of capital planning for the Department of Corrections, described how inappropriate review by the BBC can delay projects. The Department was given an appropriation to convert some buildings at the Gardner State Hospital into a medium security prison. After the designer was hired and schematic drawings prepared, the BBC project engineer objected to

needed security devices, such as a double chainlink fence and locks on inmates' cell doors, because of their expense. The Department, the designer, and the BBC spent six months arguing about these aspects of the design before the BBC approved the schematics, including the fence and the locks. Of course, a detailed program, prior to design, might have averted this problem.⁶

Another factor which contributes to delay is that the engineer assigned to a project, while responsible for reviewing the design, does not have primary responsibility for the project as a whole. The engineer will therefore not be held personally accountable for delays in the project. Not having one person in control of the project throughout its life not only fosters delay, but also makes it harder for the designer to do his or her job since there is no one person who will make necessary decisions during the course of a project.⁷

A final contributor to delays may be the designer. Because the BBC does not push a designer to keep to deadlines in the design phase but may itself delay the design, a designer may not feel that there is any urgency in completing the design. The designer may, as a result, put off BBC work whenever there is other work promising better or more prompt payment.

Delay in getting BBC projects through design and into construction was identified as a serious problem by Senator Atkins. He pointed out that there are now \$1.4 billion of authorized debts for capital construction which have not yet been encumbered (in other words, for which actual construction has not yet been started). Of this \$1.4 billion, over \$350 million was authorized by the legislature before 1974. This pattern of delay results in projects being built that were authorized ten years earlier, that may no longer be needed, or that may be inappropriate to present needs.⁸

With funds for capital construction unused for years, it becomes difficult to keep track of who is spending or can spend the Commonwealth's money. David Flynn described his experience in this regard as Deputy Commissioner of A&F:

"In the history of the Commonwealth of Massachusetts, there was never debt management...no one knew how much they spent, so you didn't know how much you could spend [on capital outlay]."⁹

When all the delays on different projects are added together, the cost to the Commonwealth is enormous. Former Deputy Commissioner Flynn told the Commission that in 1974, delay on BBC projects alone cost the taxpayers \$20 million in inflationary costs.¹⁰

Cost control

The estimated cost of construction (ECC), which is submitted by the architect or his cost consultants at several stages of design, plays a crucial role in the management of the design phase of a project. The Commission found, however, that in Massachusetts work, the ECC had often been so inaccurate an estimate of the

actual cost of a project as to make it virtually useless as a management tool. On many projects the ECC soared beyond amounts originally authorized; on others, the ECC's fluctuated without apparent cause. Out of a sample of 248 contracts, for only 61, or 25% was the final cost within 10 percent of the original estimate.

Cost control during design depends on two things that are often lacking in the BBC: a good program and a good cost estimate. Without these basic prerequisites, it is often difficult or impossible for a designer to prepare plans within the agency's original budget. The BBC often exacerbates this problem by not insisting that a designer keep to the original budget. Instead, it frequently approves increases in the estimated construction cost of a project during design, sometimes by as much as 100 percent, without prior legislative approval. It also countenances and at times causes delays in design which, in turn, causes the price of the project to escalate.

In approximately 75 percent of the projects studied by the Commission, based on BBC records, the ECC increased from the time the design contract was awarded to the time working plans and specifications were approved. For example, the University of Massachusetts Medical School teaching hospital started with an ECC of \$26,200,000 in 1967. By 1970, when the working plans and specifications were virtually complete, the ECC had gone up to \$42,400,000, an increase of \$16,200,000 or 61 percent. This greatly exceeds any increase that could be attributed to inflation alone. The final project cost of the teaching hospital was over \$60,000,000. The UMass Medical School is discussed in detail in section VII of this report. In another example, the legislature authorized design of South Shore Community College at an estimated construction cost, in 1970, of \$870,000. By 1973, the whole concept and program of the facility had been changed, and the estimated cost was up to \$16,000,000. By 1974, it had reached \$26,000,000. In 1978, the project was abandoned. In all, over \$300,000 was spent on site studies for this project. Other projects show similar patterns. A boiler plant for Fitchburg State College was estimated to cost \$1,070,000 in 1972. It eventually cost over \$2,000,000 in 1975. A mental health treatment and training facility was begun with an estimated construction cost not to exceed \$6.7 million. By the time the building was completed nearly 13 years later, construction costs had reached almost \$17 million. A classroom and library building at Northern Essex Community College increased in ECC from \$3,400,000 to \$7,959,414, or 135 percent. The estimated cost of the chemistry building at Lowell Technological Institute increased from \$2.8 million to \$6.7 million, or 141 percent. (This last ECC was still far less than the bids received--\$10.8 million.)

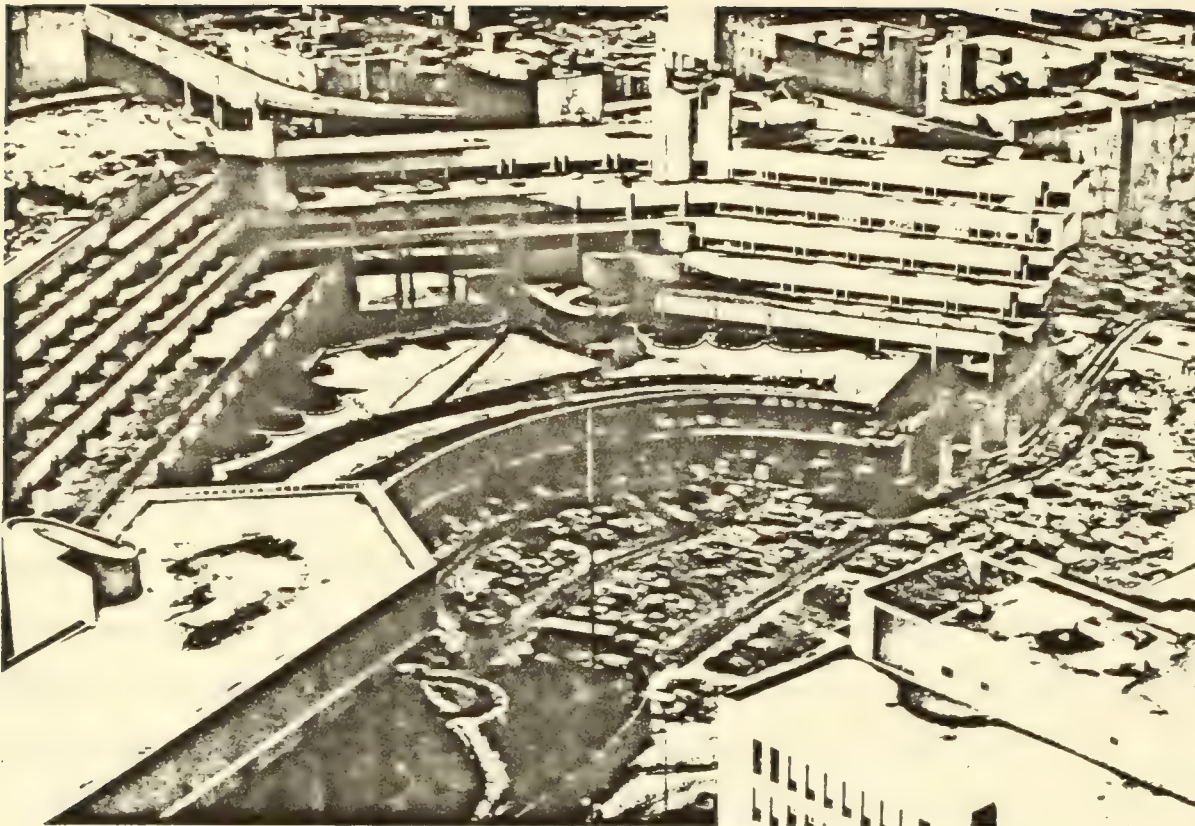
Sometimes projects increased dramatically in scope and cost over the years, as existing plans were expanded and new buildings added, often under pressure

from the using agency for whom the project is being built. In 1968, the State decided to convert the old Springfield Armory for use as a Community College at an estimated cost of \$750,000. By 1969, the estimated cost had risen to \$1,600,000. In 1970, the master plan was amended to increase the scope of renovation and to add two new buildings; the estimated cost was then up to \$6,700,000. The project kept mushrooming during the next few years. In 1974, an \$8,000,000 biology building was added to the package. The relatively small (under \$1 million) original project had, little by little, grown into a major multi-million dollar endeavor. In this case, as in many others like it, the same designer was awarded all subsequent design contracts for the project under the provisions for continued services.

Design work for renovation is equally subject to enormous increases in ECC. A project to renovate several buildings at Lowell Technological Institute increased in estimated cost from \$1,200,000 to over \$3,000,000. \$2.2 million of this work was executed. Another renovation project, at Boston State College, increased from \$196,000 to \$880,600, an increase of 350 percent; when bids were received for this project, the lowest bid was \$1,074,000, representing an additional 20 percent increase over the architect's last estimate. Before the construction contract could be awarded, \$200,000 had to be transferred from an appropriation account originally intended for land acquisition at Boston State, and \$72,000 from a BBC contingency account.

Cost increases are not confined to the BBC alone. The three buildings in the Health Welfare and Education complex administered by the Government Center Commission started with an estimated cost of construction of \$24 million in 1962. By 1967, the cost of two of the buildings had eaten up the \$34 million appropriated for the three buildings, plus an additional \$9.5 million. Bids received on the third (HWE) building, at \$21 million, were rejected partly because of insufficient funds and partly because the agency wanted a redesign. A redesign produced plans with an ECC of 51 million, also never used. In regard to this HWE complex, the state auditor wrote: "It is perfectly obvious that we cannot expect economical designs by architects who are to be paid a percentage of actual construction costs."¹¹ The first design for the South Terminal at Logan Airport increased from \$45 million to \$54 million, a 20 percent increase in two years. The UMass Building Authority's Campus center at UMass Amherst originally planned at \$8 million, finally cost \$11.3 million, a 41 percent increase.

Cost estimates given by the architect or his cost consultants often prove to be grossly inaccurate. However, there is no consistency to the poor estimating: some projects turn out to be grossly underestimated, others are overestimated. The results are undesirable in either case. If bids received are too high,



HWE complex, showing parking lot where third building was to be.

sufficient funds must be made available from a BBC contingency fund or the project must stop while a special deficiency appropriation is made by the legislature. The legislature has approved \$75 million for BBC contingency funds since 1968, and \$208 million specifically for deficiencies in 115 individual projects; a significant portion of this has been used to make up bidding increases. Alternatively, if the bids come in much lower than estimated, the money remaining in the accounts is often regarded by the using agency as its own, to be used as it sees fit. Poor estimates also wreak havoc with the designer's finances in that, anticipating a higher fee, the designer may invest more time and money in a project than he reasonably should. In addition, artificially high estimates can be used by the designer to generate early fee payments, constituting in effect, a free 'loan' from the state's money. This is discussed below, in the section dealing with fee arrangements.

The BBC has tried to enforce cost estimates by a contractual clause stating that if the low construction bid exceeds the ECC by 10 percent or more, the designer must redesign the facility, at no additional compensation, to bring it within budget. This often means the elision of much needed parts of buildings. For several reasons, redesign has not worked to control increases in ECC. First, the contract only requires redesign in cases where the bids are received within six months of approval of the working plans. Because the BBC moves slowly, and must sometimes wait for an appropriation from the legislature before soliciting

bids for a project, the six-month deadline usually passes before the project is bid, rendering the redesign clause unenforceable. Furthermore, the usefulness of the clause is completely vitiated when the designer realizes that the design is not kept within budget, and convinces the BBC to authorize an increase in ECC immediately, prior to soliciting bids. This has happened with disturbing frequency. Finally, even in cases where the redesign clause is enforceable, the BBC has rarely chosen to use it. One reason for this is strong agency pressure to get the project built, no matter what the cost. In addition, redesign means delay, and thus further cost increases, usually more than negating the cost saving measures taken. As a result, the state gets less for more. An example is the design of the Lowell Technological Institute chemistry building: the lowest bid received in August 1969 was \$10,134,000, more than \$4.1 million or 61 percent greater than the architects last estimate. More than a year later, after a redesign and a deficiency appropriation, the lowest bid received was \$743,000 more than the first rejected low bid. The South Terminal at Logan Airport is another case of poor estimating: the lowest bid received in 1968 was \$83,250,000, \$29 million or 55 percent greater than the architect's last figure. These plans were scrapped, and a substantially reduced terminal was built for \$43 million.

Some designers seemed to have an easier time than others getting increases in the ECC. For example, one designer had 13 projects with ECC's of over \$1,000,000 from 1968 to the present. On seven of these projects, the ECC was increased during the design phase by an average of 55.3 percent. Two of the projects had their ECC increased by over 100 percent during the design phase. Even though the ECC was increased on these seven projects, the increases were not sufficient to meet the actual bid prices, which averaged 20.4 percent over the final adjusted ECC. Only two of these seven projects came in below the final ECC (4.7 percent and 4.5 percent); they were still well above the original ECC, however (20.6 percent and 154.3 percent). Of the six projects on which the ECC was not raised during design, the firm did no better in keeping to cost. The average by which the low bid in those projects exceeded the original ECC was 34.4 percent. Not a single one of these 13 projects experiences final low bids that came within 10 percent of the original ECC. This appears to be an extreme example. A sampling of six similar contracts* for other designers shows that on two the low bid was within 10 percent of the original ECC, and the average by which the low bid

*Because of the size of these contracts, there were only a limited number of contracts of similar size for similar buildings which could be studied for comparison purposes.

exceeded the original ECC was 24.8 percent, as compared to 61 percent for the first architect studied.

The BBC does make some effort to control cost during design by having the designer submit periodic cost estimates. There are two serious problems with this system. First, the BBC has no professional cost estimators on its staff to check the designer's estimates. According to James Cusack, head of the design review section of the BBC, they do not have the time "really to go into a cost estimate in detail--we just use rule of thumb to check situations." Therefore, the BBC is put in the position of relying on the designer's own cost estimates.¹² Second, when cost estimates have shown that the design will exceed the budget, the BBC has proved only too ready to authorize an increase in the ECC, with the expectation that the legislature will authorize the increased expenditure for construction.

The BBC's willingness to increase the ECC during construction has been matched by the legislature's readiness to ratify the increases by means of deficiency appropriations. As noted earlier the Legislature authorized \$208 million for increases in individual projects; in addition, \$14 million was approved specifically for furnishings and equipment budgets that had been depleted by design and construction increases. As one state senator told the Commission, "Once you get the architects appointed and make the plans--the point is that the legislature will continue to pour money into that project."¹³

Finally, under the standard contract, the designer has a disincentive to control costs. If the designer is paid on the basis of a percentage of construction cost, the fee will be increased if the ECC and the final low bid price are increased. In the example given above of the designer with the 13 contracts for projects over \$1 million each, the designer's fees were increased by a total of \$4,617,722 or an average of 71.1 percent, because of the increases on the costs of these projects. Conversely, if a designer is skillfull enough to design a building for less than the ECC, he or she will be rewarded by having the fee reduced. As may be expected, this does not often happen.¹⁴

Fee arrangement

The Commission has found a number of cases in which the fee arrangements, as set forth in the designer's contract, are manipulated to generate higher payments to certain designers. This usually happens at the instigation of the designer, but also requires the cooperation of the agency administering the contract. This is done in a number of ways.

The basic fee for a BBC project is usually calculated from one of four "sliding scales" which relate fee percentages to estimated costs of construction. The higher the cost of construction, the lower the percentage fee

is due to the presumed economy of scale of larger projects. Each of the four scales relates to a different class or complexity of building. While these scales are to some degree standardized, fees are still subject to some negotiation after the contract award, such as when the designer and the BBC disagree over the proper category in which the project belongs. Some projects have been held up for months when such disputes have taken place. There is no guarantee that two designers will get the same fee percentage for similar projects.

Because the sliding scales offer higher fee rates for smaller projects, large contracts are often split into multiple contracts, thus increasing the overall fee paid. For example, one sample contract was estimated to cost \$9 million. On the particular sliding scale used, the fee rate was 5.26 percent, or \$473,400. In the middle of design, this contract was split in the following manner:

	<u>ECC</u>	<u>Sliding Scale Rate</u>	<u>Fee to be Paid</u>
#1	1,000,000	7.50%	75,000
#2	3,500,000	6.10	213,500
#3	2,700,000	6.42	173,340
#4	<u>1,800,000</u>	6.97	<u>125,460</u>
	9,000,000		587,300 = 6.53%

Thus, for no extra work, the fee was increased by \$113,900, or 25 percent. This type of split has been made with disturbing frequency. Sometimes the split has been approved after working plans approval.

Another abuse of fee arrangements consists of improper levels of payment. The fee is not paid to the designer all at once, but in stages:. For example, the designer receives 15% of his fee on submission of preliminary plans, 25% on approval of those plans, and so on. In several instances, the designer was paid, a part of his fee earlier than called for on the schedule set forth in the contract. This amounts to an interest-free loan to the designer. The interest value for early payments to one designer amounted to over \$2,000. Another method used by architects to generate early payments is to overestimate the cost of construction. Thus, overpayment is made until the correct cost is later determined (usually by the receipt of construction bids) at which time the fee is adjusted to the proper level. (If no construction is bid, this may never be

adjusted.) The interest value of such early payments to the same designer mentioned above amounted to \$18,000. In one isolated case (not the same designer) the fee was paid to the 75% level for a project for which a construction contract was never awarded: 75% of the fee is supposed to be paid only upon the award of the construction contract.

In several cases, duplicate plans were submitted for different buildings, but the full fee was paid for each set of plans. One designer submitted identical plans to two local housing authorities on the same day. Although the central agency, the DCA, notified the two authorities of this fact, the architect was paid in full for each project. In Worcester County, the same set of plans for a court house was used four times at the request of the county commissioners. While the architect gave the county a 15% or 25% discount on the three duplicate buildings, increased construction costs on the later buildings resulted in a net increase of the fee. The designer received \$69,000 for the first project (his full fee), and an additional \$222,000 for the other three.

In some cases, a single design firm regularly used the gamut of fee abuses described above. One designer studied in detail by the Commission was awarded 37 state and county contracts. Fourteen of these contracts showed evidence of unusual fee arrangements of some type; some contracts more than one. The total value to the designer of these special arrangements was \$1.098 million, 20 percent of the total fees paid to the designer for the 37 contracts.

Specifications and supplier scams

A final problem area relating to the work of the designer is the abuse of specifications. The Commission uncovered several cases of illicit arrangements between architects and suppliers which were intended to subvert the competitive bidding process, especially spec-rigging on allowances. (This problem also relates to the selection of contractors and, in some cases, to filed sub-bidding, which are discussed in later sections of this report.)

The plans and specifications which are prepared by the architect constitute the contractual requirements for the construction of the project. Specifications are the written descriptions of special characteristics of products which the architect has chosen for a project. However, specifications must not only describe clearly the architect's and client's intentions, but also provide for adequate, fair, and open competition among all contractors and suppliers able to deliver the product.

The Commission found that specifications have been used in several ways to circumvent competitive bidding (including filed sub-bidding) procedures. Under one such arrangement, the architect let a preferred vendor know, in advance of bidding, that the contractor would not be held to the exact requirements of the

drawings: this allowed the contractor to bid lower than others. This practice, called bid-rigging, is discussed in more detail below in the section of this report dealing with subcontractor selection.

In other ways, too, the architect's role in specifying materials for projects gives him/her a great deal of power regarding the ultimate selection of contractors and suppliers.* By law, specifications must be written so that at least three manufactured products may meet the requirements.** The architect may specify a name brand (a "proprietary spec"), but all specifications must include the provision for the use of any "equal," meaning a product, "at least equal in quality, durability, appearance, strength and design," and which will perform at least equally in function, and conforms substantially, even with deviations, to the item described or named in the design documents.¹⁵

It is usually left to the designer to determine whether bids submitted by contractors or suppliers do meet the intentions of the architect and needs of the client (whether a functional or a proprietary specification is used), particularly when the client is inadequately educated in the building process. If an apparent low bidder's product does not meet the specifications, that bid may be disqualified. This is usually done by the awarding authority on the recommendation of the architect. Thus, the architect is in an extremely influential position as regards the selection of vendors and may be in a position to gain by it, if willing and unsupervised. As the Commission has found, this was sometimes the case. Some architects have consistently and deliberately written specifications which describe only the product of a favored vendor, for reasons other than the intrinsic qualities of the supplier's product.

This has happened particularly in conjunction with the improper use of allowances. An allowance is a fixed dollar amount, determined by the architect or awarding authority, to cover a specified portion of the work. All general contractors include this amount in their bids and do not bid competitively for that portion of the work. The actual cost of the work is determined after the award of the general contract, either by negotiation or by a separate bidding

*The reader must bear in mind, of course, that the power to specify materials, responsibly applied, is an essential and indispensable part of the architect's services. This discussion of abuses of specification writing cannot be used to argue for the elimination of the architect from such a role.

**"...except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation." (Ch. 30, s.39M, Para. b). In some cases, usually in facade brick and finish items, the architect has specified a single product and been upheld by the awarding authority in the choice. However, the dividing line between proper and improper use of such criteria is very thin, as we shall see.

procedure. There are two types of allowances. One occurs in the context of filed sub-bidding when there are too few sub-bids in a particular trade to allow sufficient competition or when the sub-bids received are judged to be excessively high. In such cases, the awarding authority may (but is not required to) reject the sub-bids in that area and instruct general bidders to carry an allowance for the item, based on the designer's estimate. The availability of this procedure is required by the peculiarities of filed sub-bid law (see more discussion of filed sub-bidding in the sub-contractor selection section of this report). The second type of allowance occurs most often under so-called "Item I" work, that is, the work of the general contractor. Allowances of this type are used primarily when the designer is unable to prepare specifications for a portion of the work prior to bidding, or when the item is a "long-lead" item, which will not be delivered to the site until the final stages of construction. In both types of allowances, the general contractor's contract is adjusted by a change order in the appropriate amount when the actual cost of the allowance item is determined.

The Commission has found evidence and received testimony showing that allowances have been abused by a number of architects, resulting in the monopolization of contracts by a single supplier; unduly high prices being paid for goods in the form of inflated allowance prices and uncompetitive bidding; the use of inferior materials with the architects' consent; and kickbacks to architects, public employees and political fundraisers.

William V. Masiello testified that, as the architect on numerous state and county contracts, he participated in such schemes with a number of suppliers and contractors. This was largely confirmed in testimony by several of these vendors. Masiello estimated that he received or transmitted approximately \$250,000 in goods, services and cash from the favored suppliers from 1970 to 1977. For instance, on most Masiello projects for which selected vendors (Shawmut Hardware, Provost Brick) received contracts to supply materials in filed sub-bid areas, the contracts were awarded as allowances rather than through the intended filed sub-bid procedure. The specific advantage in the use of alternates instead of a normal bidding procedure was the informality of the allowance method; the architect often solicited and opened bids for the awarding authority. Indeed, one supplier testified that Masiello had allowed him to tear up and rewrite his bid after the others had been opened.¹⁶ Masiello wrote the specifications to fit the product of the favored supplier, or the supplier himself wrote the spec's for Masiello, thus guaranteeing the award to that supplier. In addition, the architect's estimate of the value of the allowance was inflated to allow for a suitably high bid, or a change order was issued

during construction. Some of this money was returned to the architect. Sometimes the architect tolerated (or the contractor supplied, in spite of the architect's objections) inferior materials or workmanship, thereby increasing the take on the state's money.

In several areas of Item I work, also, architects (including Masiello, but not Masiello alone) arranged with suppliers to rig the selection process. One such area was kitchen cabinets for elderly housing projects awarded by local housing authorities (LHA's) and approved by the central agency, the Department of Community Affairs (DCA).

The Commission found that all LHA awards for kitchen cabinets have been made as allowances, and that a significant proportion of these awards were made to one firm, Driscoll-Weber. In 1973, for instance, this firm received 23 out of a total of 25 awards, and in 1974, 19 out of 26 awards. Moreover, the award was often made to Driscoll-Weber when the local housing authority, on the recommendation of the architect, rejected the one or two other bids lower than Driscoll's. This record was achieved through the architect's use, almost verbatim, of specifications supplied by Driscoll, and an arrangement by which Driscoll returned a portion of the proceeds of contract awards to the architect by making political contributions in the name of the architect, or by providing free goods or services to architects or officials. Money for such purposes came from inflated bids, since the bidder didn't have to worry about competing with other suppliers. The architect's estimate for the allowance was suitably padded to give the appearance of a proper bidding procedure. (For a more detailed discussion of Driscoll-Weber's arrangements with Masiello and several other architects, see Volume IV of this report.) While Masiello and other architects have claimed that they specified Driscolls' cabinets because they were intrinsically good ones, the need for such illicit arrangements raises doubts as to the ingenuousness of such assertions. Even if the cabinets were acceptable, it is clear that the state paid more than was necessary for them.

ANALYSIS OF PROBLEMS

The problems of poor design management, which are outlined above, stem from a number of causes involving mainly the architect, his or her consultants, the contract administering agency, and the using agency. Many of these are linked with other issues of the building process which are discussed in other sections of this report.

Programming

Poor programming can seriously impair the design process by failing to define

the project adequately for the architect. If poor definition does not result in an overtly bad design, it may still cause unnecessary delays, cost increases, and design changes in midstream. Cases of such programming failures as the Boston State College library are discussed in the previous section.

Designer Selection

Another activity having a crucial impact on the design process is the selection of a designer. Whether a poor selection is made as a result of deliberate corruption or out of inadvertance and mismanagement, the result may be the same. How the architect is chosen is a serious problem, and is discussed in an earlier section of this report. The emphasis of this section is on the poor results of the improper selection. The selection of an architect who is incompetent, or who has not had sufficient experience in the design of the desired type of buildings, can result in technical and functional problems throughout design and construction. For example, one firm that was chosen to design a \$10+ million college academic building had never done such a building design project before, but had specialized in engineering projects such as bridges. The resulting building had serious functional shortcomings. The state, as a client, may wish to provide opportunities to design firms getting into new areas of work; but this desire can be beneficial only to a certain degree. The state must be extremely wary in the selection process of firms getting entirely out of their depth.

While improper selection, corrupt or accidental, need not always result in such overt building fiascos, there may be other hidden design costs, such as inflated fees to pay for bribes and unnecessary construction costs caused by incompetence. (For more discusson, see the section dealing with designer selection.)

Consultants

An area related to the selection of the designer and the impact of the selection process on the quality of design, concerns the consultants with whom the architect sub-contracts some specialized parts of the work. For most projects, especially large ones, consultants are routinely used by architects for structural engineering, mechanical and electrical engineering, and cost estimating. Others include specialists in acoustics, wind engineering, landscaping, and interior design. Such consultants may perform a significant portion--often as much as half--of the design work. Indeed, this work may be the most crucial part of design, such as structural engineering, on which hinges the sucess or failure of the entire building. The failure of the cantilevers at the Salem State College library, for example, was in large part attributed to the designer's structural engineering consultant.

Yet the state exerts little control over the architects' use of consultants. For BBC projects, an architect is usually asked, by the DSB, to list the consulting engineers he or she is likely to use on a project. The DSB should consider that list an important part of the designer's application. Yet, when the designer signs the contract with the BBC, there is no requirement that the consulting engineers listed on the DSB application be used. The only requirement is that the BBC approve the actual consulting engineers. Furthermore, the architect can change consulting engineers with easily obtained BBC approval. Therefore, the DSB actually has little control over the consulting engineers used, and little effort is made by the BBC to screen out consultants who have done poor work in the past. In addition, since the state is not party to the consultant's contracts with designers, it cannot exert control over the fees paid by architects to their consultants. In some cases, these fees have been surprisingly small.

These problems represent serious defects in the process, since the consulting engineers may do 40% to 60% or, or more, of the design work on a project. If the designer can substitute a less qualified engineer or one at a lower fee, the quality of design of the whole project will suffer. The only way to avoid this problem is to require a designer to use the consulting engineers listed on the application to the DSB, and to monitor the fees paid to the consulting engineers. Changes in consulting engineers should, perhaps, be referred back to the DSB.

Other states have chosen to exercise control over the use and selection of architects' consultants. In New York's State Office of General Services, for example, the specific consultants are a significant consideration in the award of a design contract, and are interviewed along with the prime designers.

Design Review

The state's management of the design process is most directly affected by the agency staff which reviews plans during design. The Commission found, however, that this review capability was fragmented among agencies, that the agencies were often understaffed, and that staff was often underpaid or underqualified to perform this function adequately. At the BBC, the review has been done by the plans examining section for large projects and the mechanical/electrical section for renovation projects. In addition, plans are reviewed by agency staffs for conformity to the needs of the agency. Independent agencies such as DCA and MBTA have their own staffs for reviewing plans. Smaller, independent instrumentalities such as counties, the Government Center Commission and the educational building authorities have had little, if any, ability to review

plans.* The poor results of such inadequate review include design errors, delays and increased costs, as described in detail above.

Design Quality.

The principal purpose of the BBC staff review of plans is to check for errors. However, BBC engineers cannot review design drawings well enough to catch all structural errors, in part because of understaffing in the BBC. As noted above, BBC engineers are commonly saddled with twenty or more projects when a more reasonable load would be six to eight projects. To compound the problem, the BBC does not pay salaries competitive with private industry; consequently, it does not get the most qualified people. As Pat Alibrandi, of the Massachusetts Construction Industry Council told the Commission:

When you are producing a \$50 million or \$100 million project, you don't turn that over to someone who is getting paid \$15,000 or \$20,000 a year, not because the dollar amount should have any relationship, but...that somebody with the capabilities of producing those properly is not going to be working for \$15,000 or \$20,000, not with the pressures and the demands of the outside world.¹⁷

Werner Tikkanen, President of the Massachusetts Society of Professional Engineers, told the Commission that engineers in government ought to be registered and adequately paid, noting that, "(i)t is a false economy to allow the review of plans by (those) less than minimally qualified, especially when it is required that such plans be prepared by those qualified."¹⁸

However, the problem of poor technical quality cannot be laid entirely at the door of the BBC. It is, after all, the designer and consulting engineers who make the initial mistakes. If the state held the designers responsible for those mistakes, that might be better insurance against errors than any checking that staff engineers might do. Indeed, some witnesses before the Commission, as well as a management consultant's analysis done for the BBC, felt that the review of plans is essentially a waste of time, and that engineers' time would be better spent in active management of fiscal, schedule and performance activities.¹⁹

Delay of Design

As described above, the plan examining section of the BBC is not equipped to prevent delay during the design phase. In fact, because it is understaffed for the function it performs, it causes much delay of its own. In addition, the lack of an adequate program guarantees at least some delay in most projects. Although the BBC is in the process of introducing a computerized system of tracking

*In 1971, the legislature removed the jurisdiction over large projects from the counties. The BBC now manages such projects.

projects during the design phase, that system has not yet proved effective in controlling delay.

The commission has looked at how other jurisdictions control delay during design. In California, for example, a time limit for design and construction is set at the time of the appropriation, based on a program developed before the capital outlay appropriation. The contract with the designer sets a time limit for the design services. A monthly schedule is established by the state's project manager, after consultation with the designer. The designer is paid on a monthly basis, less a 25% retainage, on the condition that the designer show that the schedule is being adhered to. While the design might be reviewed at key stages by special engineers, as happens in the BBC, monthly progress is checked by a project manager. In this way, continual monitoring of the design process is possible. In addition, both the possibility of withholding a monthly payment and the retainage, which is payable on completion of design, are deterrents to delay. Finally, if the design is not completed within the contract period, the designer cannot be paid for work done after the completion date in the contract unless the contract has been formally amended. Officials in California have stated that they are reluctant to extend the time for design contracts, and do not experience tremendous delays at this stage.

In contrast to the California system, designers on BBC projects are paid only at the completion of a distinct phase of design when review takes place, such as at completion of preliminary plans. Unless there is such a checkpoint, the BBC does not necessarily know whether the designer is on schedule. Since these checkpoints may be months apart, the BBC project engineer cannot keep close control over the designer's progress. There is no project manager to fulfill this function and the design review engineers are too overworked to keep track of all projects. As a result, a project may be months behind schedule before the BBC management is even aware of a problem. By that time, delay is virtually assured. Since the BBC can informally extend the time for completion of design, the design stage tends to stretch out. One solution is to increase control over delay by assigning responsibility for keeping to schedule to one person and by penalizing designers who do not keep to schedule.

While increasing controls over the designer and placing accountability for keeping to schedule in one person may help reduce delays caused by the designer, these measures will not avoid all delays in BBC projects. Delays caused by lack of an adequate program must be dealt with in the planning and programming stages, before the designer is selected. Delays caused by understaffing of the BBC plan examining section can be dealt with only by increasing the staff or by curtailing their responsibility for review. Because of the cost implications of any delay,

the office which is responsible for fiscal control should be involved in decisions which may lead to delays in design.

Cost Control

Cost control during design can be approached in several ways. However, the first prerequisite to any system of cost control is knowing when costs are increasing beyond budget. This requires regular review of the design by a professional cost estimator working directly for the Commonwealth. This cost estimator should, of course, have made a detailed conceptual estimate at the program stage, prior to hiring a designer, so that the project starts with a realistic ECC as a baseline for costs.

Even if the BBC is given the resources to make professional cost estimates and to move projects along rapidly enough to avoid tremendous cost escalation due to inflation, the problem of keeping to the original estimate still remains.

The Commission was told that in California it is extremely difficult to get the legislature to increase an appropriation for reasons other than inflation. As a result, they do not have a problem with cost increases during design. In Massachusetts, on the contrary, the legislature, once committed to a project, tends to approve whatever cost increases seem necessary. Therefore, one incentive for staying within budget is lacking in Massachusetts. The BBC and other agencies could of course serve as the brake on cost escalation. The DCA, the Commission was told, does enforce its initial budget limitations, requiring the designer to redesign if the project bids come in over budget. Most agencies, however, fail to do so.

Another aspect of cost control is having one person responsible for keeping the project within budget. On BBC projects that person could be the consultant designer. If the designer takes the budget restrictions seriously, as some do, the project will stay within reasonable limits. If the designer does not take the budget restrictions seriously, because he or she knows the original cost estimate was arbitrary or is not concerned about cost, or because he or she knows that increasing the cost of the project will increase the fees, costs will be difficult to control under the present system. As noted above, the BBC's design review section has neither the staff nor the expertise to monitor costs. A project manager, assigned to the project from the program stage, and with professional cost estimating support could do so effectively.

The legislature could also play a part in keeping project costs down. If the BBC were prohibited from increasing the ECC during the design phase without prior legislative approval beyond a fixed amount for construction cost escalation, it would be forced to think very carefully before increasing the ECC. It would, at the very least, have to offer a substantive justification for the increase. This

requires an effective system to monitor the designer's cost estimates. This could best be done by assigning responsibility to a project manager, with the assistance of a professional cost estimator.

Lack of Accountability

Closely related to issues of project design review is the problem of insufficiently defined responsibilities for decisions made on state projects. There is no continuity of managerial responsibility during the course of a project. For example, the BBC's long-range planning staff loses sight of a project as soon as the designer is hired. During design another section oversees the project, and during construction yet another. Managers of project phases lack both an overall perspective on the intent and history of the project and a sense of responsibility for the final outcome of the project. Aside from its effects on the management of earlier and later stages of the project (which are discussed in other sections). This situation results in the poor control of design quality, costs, and schedule documented throughout this report.

Without a sense of their own responsibility, project managers fail to hold other participants in the project accountable for their actions. Thus, the BBC often approves increases in fee and ECC requested by designers with little fuss. The consistent failure to enforce the redesign clause of the designer's contract when construction bids exceed the last ECC is another case in point.

At other contract administering agencies, accountability is often disregarded, largely because of the limited professional staff available to these authorities. The free reign in the use of allowances given architects by local housing authorities has permitted the abuse of specifications, as previously described. Even when serious problems are brought to their attention, authorities have ignored the problem. For example, the DCA commissioner notified two local authorities that one architect had submitted nearly identical plans to each one noting:

"you should know that you are not getting the individual attention which we encourage and for which you are paying. You should have an architect prepared to give you a design best suited to your site and your town. This duplicated submission by [the architect] does not inspire any such confidence."²⁰

However, the authorities were apparently not disturbed by this, for they paid the architect his full fee for each set of plans.

A final factor relating to the states' poor record of accountability is the independence of the various small agencies administering construction projects such as the Government Center Commission and educational building authorities. Not only do many of these authorities lack expertise in contract administering as noted above, but they also follow and closely defend their own autonomy of

procedure. This independence further obstructs accountability by fragmenting record-keeping and hampering information management.

Lack of Formal Evaluation

The Commonwealth does no formal evaluations of either the performance of designers (and contractors) or of the aesthetic, functional, or technical efficacy of the results. In the area of design, this has resulted in the selection of designers who have not performed adequately on previous projects to do additional state work, and in the failure to identify which buildings or parts of buildings have been successful and which have been failures. While some informal evaluation and learning may have taken place in the normal course of building design, construction and use, it is important that the state evaluate its projects regularly and consistently.

The experience of administering agencies in working with designers in the past should be included as an important part of the deliberations on the selection of firms for new projects. Agencies should actively evaluate the performance of designers at the end of a project and at any other appropriate point in the course of a project. Not only should the technical quality of a design be considered, but also the designer's ability to meet schedule and cost limitations, to work with the parties involved in the project, and to supervise construction. Evaluation as a part of the designer selection process is discussed in a previous section of this report.

Another type of evaluation considers the buildings themselves, particularly the functional quality of the design rather than its technical competence. Such an evaluation would rarely be made for the purpose of fixing blame or penalizing the designer, but rather to be used in future planning, programming, and design of similar projects. This type of evaluation often called post-occupancy evaluation, is discussed in the section on programming.

Solutions

Planning, Programming, and Designer Selection

As described in detail in the previous sections, the Commission's legislative proposals provided for an improved planning process which ensures that an adequate program which accurately reflects current user needs is prepared prior to the start of design. Further, the changes to the designer selection procedure are intended to remove that procedure from improper political pressures to ensure that the most qualified and appropriate architects are chosen to design state buildings. In addition, the inclusion of the project manager as a non-voting member of the designer selection board will ensure that the selection is in line with the goals of the program, and that the supervisor of the design and

construction phases of the project is aware of the criteria used in selection of the designer.

Approval of Consultants

When appropriate, the designer selection board may require that applicants list the consultants which they are likely to employ. It is intended that this will occur most often when significant or complex portions of the work of the designer are involved, particularly in areas such as structural and mechanical engineering; although other area may well be appropriate (e.g. accoustical consultants for an auditorium). No consultant who is currently debarred from public work by the division (pursuant to Ch. 149 s. 44C) may be employed. Any changes or additions to the list of consultants named by the architect must be approved by the deputy commissioner and the designer selection board must be notified of the change, along with a written statement of the reasons for the change.²¹

Project Management

The use of project managers is an essential part of the Commission's proposals. Its aim is to provide continuity of project management from the planning stages to the initiation of occupancy, and to focus on one individual, the responsibility for decision making and accountability for the consequences of those decisions. During the design phase, the project managers and the office of project management will be responsible for the control of estimated construction cost, the schedule, and the review of plans submitted by the architect. The project manager will have exclusive authority to make decisions, representing the using agency, but it is necessary that he or she consult with the using agency and take into consideration its recommendations and desires.²²

1. Cost: Before approving plans during design review, the project manager must certify that the project can be accomplished within the legislative authorization for that project. (Or, if only funds for design have been approved, then within the stated project cost in the language of the appropriation.) To assist the project manager in these duties, the office of project management will assign a professional cost estimator to review the plans and cost estimates submitted by the designer²³ Legislative approval must be obtained for increases in project cost.

2. Schedule control: The project manager is responsible for working with the designer to draw up a month-by-month schedule for the project based on the requirements of the program²⁴ The project manager should hold the designer to this schedule, or approve extensions for good cause. The division may choose to draw up a designer's contract providing for monthly payments, based on such a schedule, to insure schedule compliance.

3. Substantive review: Plans review by the agency should be limited to seeing that the design complies with all state and federal laws, rules, regulations and codes. (This is particularly crucial when federal assistance is provided for building projects, as the failure to comply with federal program requirements in the UMass/Worcester Teaching Hospital amply demonstrates. The program manager should be responsible for compliance with such requirements as part of contract administration.) It is intended that the agency will perform less review of plans for technical and structural mistakes than it has in the past, since these areas are clearly the responsibility of the designer. To further guard against problems caused by mistakes of a technical nature, the designer must obtain a professional liability insurance policy covering negligent errors, omissions and acts of the designer (or any person or firm working for the designer), providing for coverage in an adequate amount as required by the agency. Consultants may also be required, when appropriate, to obtain liability insurance²⁵

4. Award of construction: No building project may proceed to the construction stage until reviews, as noted above, are made by the project manager and cost estimator, and are approved by the director of the division; these reviews are to insure that sufficient funds have been approved by the legislature and are available²⁶, and that the design conforms to the programs developed for the using agency²⁷

The redesign clause is by no means a panacea for the problem of poor estimating of construction costs, as it addresses the problem too late and creates problems of its own, such as delays, the deletion of parts of projects, and additional expense on the designer's (and often also the client's) part. The single most important tool in the prediction of construction bids remains good, professional cost estimating by the designer and effective review and control of those estimates by the agency. However as a last resort, all design contracts should include a redesign clause, which should be rigorously enforced when designers or using agencies refuse to abide by project budget limitations. The division might choose to extend the period for redesign from six months to a year, but also include a provision that the cost increase during bidding attributable to inflation (based on a standard acceptable construction cost index) should be factored out of the difference between the last estimate and the construction bid.

Allowances

The problems created by the use of allowances are manifold. Allowances prevent competition as to that portion of the bid covered by the allowance. They prevent the awarding authority from knowing, at the beginning of construction,

how much the project will ultimately cost. Most seriously, they lend themselves to manipulation for unlawful purposes.

The Commission has determined that no purpose is served by the continued tolerance of a procedure so beset with problems. The legislation prohibits the use of allowances under all circumstances. It provides that, if a designer is unable to fully specify a portion of the project work when bids are solicited, that portion must be omitted from the bid documents and put out to bid at a later time when the specifications have been prepared²⁸ Allowances are permitted only when necessitated by the rejection of all sub-bids in a particular sub-bid area²⁹

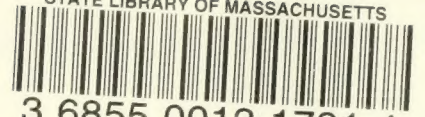


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